TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 225.

AUGUSTA A. PETERSON AND IDA PETERSON, A MINOR,
PLAINTIFFS IN ERROR,

vs.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

FILED MARCH 16, 1906.

(20,131.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 5, 1906.

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1 *Caption.*

Be it remembered, that at a term of the Circuit Court of the United States, in the Fifth Circuit, and in and for the Northern District of Texas, at Fort Worth, begun and holden on the 6th day of November A. D. 1905, and which term adjourned on the 6th day of January A. D. 1906, the Honorable Edward R. Meek, United States District Judge for the Northern District of Texas, presiding, the following cause came on to be heard upon defendant's motion to quash the service of process on defendant, to-wit:

No. 320.

AUGUSTA A. PETERSON ET AL.
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

2 *Plaintiffs' Original Petition.*

Filed July 30th, 1904.

In the United States Circuit Court for the Northern District of Texas, at Fort Worth.

No. —.

AUGUSTA A. PETERSON ET AL.
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

To the Honorable, the Judges of the Circuit Court of the United States in and for the Northern District of Texas:

Augusta A. Peterson and Ida Peterson, the latter a minor without guardian, suing by her mother and next friend, the said Augusta, herein styled plaintiffs, complaining of the Chicago, Rock Island & Pacific Railway Company, hereinafter called the Rock Island Company, and styled defendant, respectfully represent:

That plaintiffs are citizens of the state of Texas, and residents of Tarrant county of said state; that the defendant Rock Island Company is a railroad corporation duly incorporated and organized under the laws of the state of Illinois. That heretofore, to-wit: on the 19th day of October 1903, and for a long time prior thereto the said defendant Rock Island Company owned and operated as a common carrier of freights and passengers, a line of railway with various and divers connecting branches then and there extending from the city of Chicago in the state of Illinois, in a southwesterly direction into and through the state of Missouri, Kansas and into and through the Territory of Oklahoma and the Indian Territory to Red River on the south line of said Indian Territory.

That on to-wit: the last named day, and for a long time prior thereto, the defendant operated and now operates the Chicago, Rock Island & Gulf Railway Company, a corporation duly and legally incorporated and organized under the laws of the State of Texas in connection with said Rock Island Company, which Chicago, Rock Island & Gulf extends from said Red River through various counties in the state of Texas to the city of Fort Worth in Tarrant county, Texas. That said two lines of railway then and there connected, and yet connect with each other at said Red River and formed and yet form one continuous line of railway from said
3 city of Chicago to said Oklahoma Territory and the Indian Territory, and into the state of Texas to the city of Fort Worth.

Plaintiffs say that on to-wit: the last named date and for a long time prior thereto the defendant, the Rock Island Company, and said Chicago, Rock Island & Gulf Railway Company were engaged in operating said lines of railway as a single system, and as a single line, which was known and advertised by said companies as the Rock Island System. That while said two companies were separately incorporated, as aforesaid, they were in truth and in fact, and ever have been, substantially one company, and that said lines of railway were in truth and in fact, and ever have been, owned and operated by said companies as parts of the same system. That said companies in operating said lines and railway have been and yet are acting together as partners and as agents of each other. That said Rock Island Company was then and there, and ever has been, and is yet the dominant or parent company or corporation. That said Chicago, Rock Island & Gulf Railway Company was and ever has been but a subordinate and ancillary corporation, which was organized and incorporated by and at the instance of the said Rock Island Company, as an agency through which to enable said *said* last named company to extend and operate its said line of railway into the said city of Fort Worth. That said Chicago, Rock Island & Gulf Railway Company is now and has ever been completely dominated and controlled by said Rock Island Company, and is now and was at the date aforesaid the agent in Texas of said Rock Island Company, and that said last named company has heretofore transacted and yet transacts its business in Texas through and from the general offices and through and by the general officers and local agents of the said Chicago, Rock Island & Gulf Railway Company. That while the officers and local agents of said Chicago, Rock Island & Gulf Railway Company are employed ostensibly by said last named company, said officers and agents are and ever have been in reality acting for and in behalf of said Rock Island Company, and for said system. That said Rock Island Company is thus engaged in doing business in the State of Texas, and that it has officers and local agents in said state. That S. B. Hovey, who resides in Tarrant county, Texas, is the vice president and general manager of said Chicago, Rock Island & Gulf Railway Company, and is also general manager and local agent in Texas of said Rock Island Company; and that F. E. Merrell, who resides in Fort Worth,

Tarrant county, Texas, is the local agent in said county for
4 both the defendant, the Rock Island Company, and the Chicago, Rock Island & Gulf Railway Company and for said system. That heretofore, to-wit: on the 19th day of October 1903, said two lines of railway were then and there owned and operated as one continuous line of railway, extending as aforesaid, from the city of Chicago to the city of Fort Worth. Plaintiff says that the first division of said system going northward extends from Fort Worth to the city of Chickasha in the Chickasaw Nation in the Indian Territory, and that M. E. Sebree, who resides and has his office in Tarrant county, Texas, is the trainmaster on said division and is a local agent in Texas for said defendant.

For cause of action plaintiffs allege that on to-wit: the day and year last aforesaid John Peterson, the husband of Augusta, and father of Ida Peterson, was in the employment and service of the defendant, the Rock Island Company, as a locomotive engineer on one of defendant's engines, pulling a freight train between Chickasha in the Indian Territory and the city of Fort Worth, Texas, at which first named place said defendant then and there had and maintained large and extensive yards with a complicated system of switches and tracks for the making and breaking up and handling of trains, and for the movement of such trains. That said defendant also then and there had and maintained a round house and machine shops wherein a large force of men were constantly employed, and that it then and there maintained at said point its division headquarters for several of its divisions, with a corps of division officers, including a division superintendent. That the men working in said yards were employed and discharged by such division officers, who were then and there charged with the duty of employing only competent and skilled men for service in said yards. That said train on which said Peterson was engineer, as aforesaid, was drawn by two engines and what is commonly called a "double header." That on the date last aforesaid, about six o'clock p. m. of said day, in the yards of the defendant, the Rock Island Company, at Chickasha in the Indian Territory, the engines used in drawing said train were brought out of the round house and placed upon an outer switch call the "dead track" properly coaled, watered and fired up preparatory to going on the run from Chickasha to Fort Worth, which said Peterson and the other members of said crew had been then and there by the proper authorities ordered and directed to make.

5 That while said Peterson was discharging the duties of his employment in aiding the brakeman in coupling his—Peterson's—engine onto the other engine used in hauling said train, and while he was passing between said engines, which were standing near each other on said "dead track" to the opposite side of same so as to get in position to insert the pin in the coupling bar or beam so as to hold same in its proper position to couple said engines together, a switch engine of the defendant Rock Island Company at work on the defendant's yards at said place was negligently and

carelessly run upon said "dead track" where said two engines were standing, as aforesaid, and without any notice or warning of any kind, with great force collided with said Peterson's said engine, forcing the same back against and upon the other engine with great violence. That said Peterson was caught between said engines in said collision and crushed, bruised and mangled and so injured that he died from said injury on the next day, the 20th of October 1903. Plaintiffs allege that the track upon which said engines were placed and standing was intended to be used exclusively for the accommodation of road engines coming into and going out from said round house at said place, which was the end of a division of said road, as aforesaid, and that no other engines, cars or rolling stock of any kind should have been allowed on said tracks, and that at the time of said accident said Peterson did not know and could not have known by any means whatever that said switch engine would be run in and upon said track where it had no right to go and where, by the rules of said company, it was forbidden to go, but assumed, as he had a right to do, that said track would be kept free, unused and unmolested by any engines or cars while his engine was occupying the same and while he was thus engaged in coupling his engines, as aforesaid, preparatory to going out with his train, as aforesaid, and as he had been ordered to do.

Plaintiffs allege that the said John Peterson was at the time of his injury and death a highly skilled, careful and competent locomotive engineer, popular with his employers and co-employés, healthy, strong and active, being at the time of said accident thirty-nine years of age. That he was a kind and affectionate husband, who provided well and amply for his said family, and was capable of earning by virtue of his skill and competency in his line of employment, as aforesaid, much money, and was earning and had been for a long time theretofore, the sum of to-wit: $150.00 per
6 month. That said Peterson died intestate and no administration has been granted upon his estate and none is necessary.

Plaintiffs aver that the cause of the accident and injury to the said John Peterson which caused his death, as aforesaid, was the culpable and gross carelessness and negligence of the switchman of the switch engine, who was at the time working with said switch engine which ran in and upon the "dead track" where said Peterson's engine was standing, and who was wholly unfitted and incompetent for such work, being almost entirely without experience in such employment. That through the ignorance, inexperience and incompetency, gross carelessness and negligence of said switchman instead of throwing the right and proper switch as he should have done and sending the switch engine down the round house track, where it was intended to go, and where it should have gone, negligently closed the round house switch, or if it was already closed, negligently failed to open it, thereby allowing and causing the switch engine when put in motion by the engineer in charge of same, to run by and pass the round house track which it should have taken and onto the "dead track" where said engines were standing, as aforesaid, and colliding with same with great violence and causing

the injury to said Peterson, as aforesaid. Plaintiffs allege that said switchman was wholly ignorant and inexperienced in the business and work of throwing switches and knew nothing whatever about the duties of said employment, and was incompetent to perform such work and service in a safe and careful manner and that the incompetency of said switchman to perform such service was well known to the defendant Rock Island Company and its officers and agents at the time they employed and put him at said dangerous work in said yards, as aforesaid, or might have been known to them by the use of ordinary care. That the said Peterson was wholly unacquainted with said switchman and did not know that he was an ignorant, incompetent, inexperienced, reckless, careless and dangerous servant and unfitted for the work that he was attempting to perform; and did not know that he was an inexperienced incompetent and dangerous employé and wholly unfitted for said work, but that said Peterson assumed that said switchman and other co-employés at work with said switch engine, were careful, competent and safe co-employés, and acting upon such assumption as he had a right to do, did not anticipate or expect any danger or injury from the source from which his fatal injury came, as aforesaid. Plaintiffs allege
7 that through the culpable and gross negligence of the defendant as herein alleged and set out, said Peterson was injured and killed by the defendant, as aforesaid, to the damage of plaintiffs in the sum of Thirty thousand ($30,000.00) Dollars, and for which they sue and pray judgment.

Plaintiffs further allege that the statute laws of the State of Arkansas are now and were in force under and by virtue of an act of Congress in the Indian Territory, where said injury and death occurred, and that under the laws plaintiffs are given a right of action against the defendant for the wrong and injuries herein complained of, the same as under the laws of the state of Texas, and that under said laws the recovery for such wrongs and injuries is for the exclusive use and benefit of the surviving widow and next of kin of the deceased, and which recovery is apportioned among the persons entitled to receive the same according to the descent and distribution of personal property under the laws of said state, which plaintiff alleges is one-third thereof to the widow and the remainder to the child or children of the deceased; and that the said Augusta is entitled to one-third of whatever may be recovered in this action, and her minor child, Ida, to the remaining two-thirds of said recovery, she, the said Ida, being the only child of said John Peterson and was born on the 26th day of October 1903, five days after the death of said Peterson. Wherefore, premises considered, plaintiffs sue and pray for citation against said defendant in terms of the law and that upon final hearing they have judgment against the said defendant for their damages and interest thereon, and all costs of suit, and for all other and proper relief both general and special.

SAM J. HUNTER,
STEWART & TEMPLETON,
Attorneys for Plaintiffs.

8 *Statute Laws of Arkansas.*

As Copied from Mansfield's Digest.

By Dorset Carter.

As Found in His Annotated Statutes of the Indian Territory, —, 1899.

SEC. 3434 (M. D. 5225). Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or company or corporation which would have been liable if death had no- ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount, in law, to a felony. (S. & H. 5910.)

SEC. 3431 (M. D. 5226). Every such action shall be brought by, and in the name of the personal representatives of such deceased person, and if there be no personal representatives then the same may be brought by the heirs at law of such deceased person; and the amount recovered in every such action shall be for the exclusive benefit of the widow and next of kin of such deceased person, and shall be distributed to such widow and next of kin, in the proportion provided by law in relation to the distribution of personal property left by persons dying intestate; and, in every such action, the jury may give such damages as they shall deem a fair and just compensation, with reference to the pecuniary injuries resulting from such death to the wife and next of kin of such deceased person. Provided, that every such action shall be commenced within two years after the death of such person. (Act March 6, 1883; S. & H. 5912.)

SEC. 1879 (M. D. 2591). A widow shall be entitled, as part of her dower, absolutely and in her own right, one-third part of the personal estate, including cash on hand, bonds, bills, notes, book accounts and evidences of debt whereof the husband died seized or possessed. (Act Feb. 21, 1859, Sec. 1; Act March 8, 1867; S. & H. 2541; G. D. 2230.)

SEC. 1820 (M. D. 2522). When any person shall die, having title to any real estate of inheritance, or personal estate, not disposed of, nor otherwise limited by marriage settlement, and shall be intestate as to such estate, it shall descend and be distributed in parceny, to his kindred male and female, subject to the payment of his
9 debts and the widow's dower, in the following manner:

First: To children, or their descendants, in equal parts.

Second: If there be no children, then to the father, then to the mother; if no mother, then to the brothers and sisters, or their descendants in equal parts.

Third: If there be no children, nor their descendants, father, mother, brothers or sisters, nor their descendants, then to the grand-

father, grandmother, uncles and aunts and their descendants in equal parts, and so on in other cases, without end, passing to the nearest lineal ancestor and their children and their descendants in equal parts. (S. & H. 2470; G. D. 2162.)

SEC. 1821 (M. D. 2523). Posthumous children of the intestate shall inherit in like manner as if born in the lifetime of the intestate, but no right of inheritance shall accrue to any person other than the children of the intestate, unless they be born at the time of the intestate's death. (S. & H. 2471; G. D. 2163.)

This is all the statutory law of Arkansas bearing on the subject matter of this case.

The foregoing has the following endorsement, to-wit:

No. 320. Augusta A. Peterson *et al. vs.* Chicago, Rock Island & Pacific Railway Company. Plaintiff's original petition. Filed 30 day of July 1904. J. H. Finks, Clerk By J. B. Finks, Deputy.

10 In the United States Circuit Court for the Northern District of Texas, at Fort Worth.

The President of the United States of America to the Marshal of the Northern District of Texas, Greeting:

You are hereby commanded to Summon The Chicago, Rock Island & Pacific Ry. Co., by serving S. B. Hovey, Vice President & General Manager of Chicago, Rock Island & Gulf Ry. and General Manager and Local Agent of the Chicago, Rock Island & Pacific Railway Company, a resident Citizen of the County of Tarrant, if to be found in your District, to be and appear before the Honorable Circuit Court of the United States, at the next regular Term thereof, to be holden for the Fifth Judicial Circuit and Northern District of Texas at the Court Room thereof, in the City of Fort Worth, on the first Monday, it being the 7th day of November next, to answer the Petition in Case No. 320, filed on the 30th day of July, 1904, of Augusta A. Peterson and Ida Peterson, a minor, Plaintiffs against the Chicago, Rock Island & Pacific Railway Company, Defendant.

The nature of the Plaintiff's demand is as follows, to-wit: Suit for damages in the sum of $30,000.00 for the death of pl'ff's husband, John Peterson, said death alleged to be the result of an accident to said Peterson while he was in def't's employ as locomotive engineer and in def't's yards at Chickasha, I. T. and was caused by one of Peterson's co-employés negligently and carelessly running an engine upon said dead track on which were 2 engines, on one of which Peterson was working, causing the engines to collide and crushing Peterson between them, bruising him in such manner that he died; and for costs of suit, etc. Pltff. further represents that the Chicago, Rock Island & Pacific and Chicago, Rock Island & Gulf Railways while separately incorporated are substantially one company and owned and operated as one company, as is fully shown by Plaintiff's original petition, a copy of which duly certified is herewith accompanying and here referred to for a more distinct statement of the cause of action herein, of which you will serve the said Chicago,

Rock Island & Pacific Ry. Co. defendant, by serving S. B. Hovey, Vice president and General Manager of the Chicago, Rock Island & Gulf Ry. Co. and General Manager and Local Agent of the Chicago, Rock Island & Pacific Ry. Co., also with the accompanying certified copy of said petition; and with a true copy of this Writ.

Herein fail not, and due return of this Writ make, on or before the 7th day of Nov'r next, showing how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the Seal of said Circuit Court, at Fort Worth, Texas, this 1st day of August in the year of our Lord 1904, and of American Independence the 129th year.

[SEAL.]

J. H. FINKS,
Clerk of said Circuit Court,
By J. B. FINKS,
Deputy Clerk.

11 [Endorsed:] Marshal's Docket No. 1329. E. No. 320 U. S. Circuit Court, Northern District of Texas, at Fort Worth. Augusta A. Peterson, *et al. vs.* C. R. I. & P. Ry. Co. Citation to S. B. Hovey, V. P. & G. M. &c. &c. Tarrant County. Issued Aug. 1, 1904. J. H. Finks, Clerk. By J. B. Finks, Deputy. Returned and filed Aug. 3 1904 J. H. Finks, Clerk. By J. B. Finks, Deputy. M. O. D.

Marshal's Return.

Received this Writ on the second day of August, 1904, and I executed the same on the second day of Aug. 1904, by delivering to the within named defendant The C. R. I. & P. Ry. Co., by serving S. B. Hovey, Vice president and General Manager of Chicago, Rock Island and Gulf Ry. Co., and General Manager and Local Agent of the Chicago, Rock Island and Pacific Ry. Company, at Fort Worth, Tarrant Co., Texas, of said defendant Company in person, a certified copy of the Petition in this case; also a true copy of this Writ.

GEO. H. GREEN,
U. S. Marshal, N. D. T.,
By W. O. THOMAS, *Deputy.*

Fee	$2.00
Mileage	
Actual Expense	
Total	$2.00

12 In the United States Circuit Court for the Northern District of Texas, at Fort Worth.

The President of the United States of America to the Marshal of the Northern District of Texas, Greeting:

You are hereby commanded to Summon The Chicago, Rock Island & Pacific Ry. Co. by serving F. E. Merrell, local agent in Tarrant

county, Texas, for the Chicago, Rock Island & Pacific Ry. Co. and for Chicago, Rock Island & Gulf Ry. Co. said F. E. Merrell being a resident Citizen of the County of Tarrant, if to be found in your District, to be and appear before the Honorable Circuit Court of the United States, at the next regular Term thereof, to be holden for the Fifth Judicial Circuit and Northern District of Texas at the Court Room thereof, in the City of Fort Worth, on the first Monday, it being the 7th day of November next, to answer the Petition in Case No. 320, filed on the 30th day of July, 1904, of Augusta A. Peterson and Ida Peterson, a minor, Plaintiffs against the Chicago, Rock Island & Pacific Railway Company, Defendant.

The nature of the Plaintiff's demand is as follows, to wit: Suit for damages in sum of $30,000.00 for the death of pl'ff's husband, John Peterson, said death alleged to be the result of an accident to said Peterson while he was in def't's employ as locomotive engineer and in def't's yards at Chickasha, I. T. and was caused by one of Peterson's co-employés negligently and carelessly running an engine upon a dead track on which were 2 engines, on one of which Peterson was working causing the engines to collide and crushing him between them, bruising him in such manner that he died; and for costs of suit etc. Pl't'ff further represents that the Chicago, Rock Island & Pacific Ry. and Chicago, Rock Island & Gulf Ry., while separately operated are substantially one company, and owned and operated as one company, as is fully shown by Plaintiff's original petition, a copy of which duly certified is herewith accompanying and here referred to for a more distinct statement of the cause of action herein, of which you will serve the said Chicago, Rock Island & Pacific Ry. Co., defendant, by serving F. E. Merrell, Local Agent for the Chicago, Rock Island & Pacific Ry. Co., and Chicago, Rock Island & Gulf Ry. Co. also with the accompanying certified copy of said petition; and with a true copy of this Writ.

Herein fail not, and due return of this Writ make, on or before the 7th day of Nov'r next, showing how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the Seal of said Circuit Court, at Fort Worth, Texas, this 1st day of August in the year of our Lord 1904, and of American Independence the 129 year.

[SEAL.]

J. H. FINKS,
Clerk of said Circuit Court,
By J. B. FINKS,
Deputy Clerk.

13 [Endorsed:] E. Marshal's Docket No. 1329 No. 320 U. S. Circuit Court, Northern District of Texas, at Fort Worth. Augusta A. Peterson *et al. vs.* C. R. I. & P. Ry. C. Citation to F. E. Merrell, Local Ag't &c. Tarrant County. Issued Aug. 1, 1904 J. H. Finks, Clerk. By J. B. Finks, Deputy. Returned and filed Aug. 3, 1904. J. H. Finks, Clerk. By J. B. Finks Deputy. M. O. D.

Marshal's Return.

Received this Writ on the second day of Aug. 1904, and I executed the same on the second day of Aug. 1904, by delivering to the within named defendant the C. R. I. & P. Ry. Co., by serving F. E. Merrell, local agent for the Chicago, Rock Island and Pacific Ry. and the Chicago, Rock Island and Gulf Ry. Co., at Fort Worth, Tarrant Co., Texas, of said defendant company, in person, a certified copy of the Petition in this case; also a true copy of this Writ.

GEO. H. GREEN,
U. S. Marshal, N. D. T.,
By W. O. THOMAS, *Deputy.*

Fee	$2.00
Mileage	
Actual Expense	
Total	$2.00

14 In the United States Circuit Court for the Northern District of Texas, at Fort Worth.

The President of the United States of America to the Marshal of the Northern District of Texas, Greeting:

You are hereby commanded to Summon The Chicago, Rock Island & Pacific Ry. Co. by serving M. E. Sebree, Trainmaster of the first division of the Chicago Rock Island & Gulf Ry. and Chicago, Rock Island & Pacific Ry. and local agent in Texas, said M. E. Sebree being a resident Citizen of the County of Tarrant, if to be found in your District, to be and appear before the Honorable Circuit Court of the United States, at the next regular Term thereof, to be holden for the Fifth Judicial Circuit and Northern District of Texas at the Court Room thereof, in the City of Fort Worth, on the first Monday, it being the 7th day of November next, to answer the Petition in Case No. 320, filed on the 30th day of July, 1904, of Augusta A. Peterson and Ida Peterson, a minor, Plaintiffs against the Chicago, Rock Island & Pacific Railway Company, Defendant.

The nature of the Plaintiff's demand is as follows, to wit: Suit for damages in sum of $30,000.00 for the death of pl't'ff's husband, John Peterson, said death alleged to be the result of an accident to said Peterson while he was in def't's employ as locomotive engineer and in def't's yards at Chickasha, I. T. and was caused by one of Peterson's co-employés negligently and carelessly running an engine upon a dead track on which were 2 engines, on one of which Peterson was working, causing the engines to collide and crushing him between them, bruising him in such manner that he died; and for costs of suit etc. Pl't'ff further represents that the Chicago, Rock Island & Pacific Ry. and Chicago, Rock Island & Gulf Ry., while separately incorporated are substantially one company, and owned and operated as one company, as is fully shown by Plaintiff's original petition, a

copy of which duly certified is herewith accompanying and here referred to for a more distinct statement of the cause of action herein, of which you will serve the said Chicago, Rock Island & Pacific Ry. Co., defendant, by serving M. E. Sebree, Trainmaster and Local Agent, etc., also with the accompanying certified copy of said petition; and with a true copy of this Writ.

Herein fail not, and due return of this Writ make, on or before the 7th day of Nov'r next, showing how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the Seal of said Circuit Court, at Fort Worth, Texas, this 1st day of August in the year of our Lord 1904, and of American Independence the 129 year.

[SEAL.]

J. H. FINKS,
Clerk of said Circuit Court,
By J. B. FINKS,
Deputy Clerk.

15 [Endorsed:] E. Marshal's Docket No. 1329 No. 320 U. S. Circuit Court, Northern District of Texas, at Fort Worth. Augusta A. Peterson *et al. vs.* C. R. I & P. Ry. Co. Citation to M. E. Sebree, Trainmaster &c. Tarrant County, Issued Aug. 1, 1904 J. H. Finks, Clerk. By J. B. Finks, Deputy. Returned and filed Aug. 3, 1904 J. H. Finks, Clerk. By J. B. Finks, Deputy. M. O. D.

Marshal's Return.

Received this Writ on the second day of August, 1904, and I executed the same on the second day of August, 1904, by delivering to the within named defendant The Chicago, R. I. & Pacific Ry. Co., by serving M. E. Sebree, Trainmaster of the first division of the Chicago, Rock Island & Gulf Ry. and Chicago, Rock Island and Pacific Ry. and local agent in Texas, in Fort Worth, Tarrant Co., Texas, of said defendant company, in person, a certified copy of the Petition in this case; also a true copy of this Writ.

GEO. H. GREEN,
U. S. Marshal, N. D. T.,
By W. O. THOMAS, *Deputy.*

Fee	$2.00
Mileage	
Actual Expense	
Total	$2.00

16 *Defendant's Motion to Quash Service.*

Filed November 8th, 1904.

In the Circuit Court of the U. S. for the Northern District of Texas, at Fort Worth.

AUGUSTA A. PETERSON
vs.
THE C., R. I. & P. RY. CO.

Now comes the defendant, The Chicago, Rock Island & Pacific Railway Company, and appearing in this case only for the purpose of filing motion to quash service, and declinging to enter an appearance for any other purpose, shows to the court as follows:

That S. B. Hovey, M. E. Sebree and F. E. Merrell have been served with citations in this case, citing The Chicago, Rock Island and Pacific Railway Company to appear and answer, and that no other person has been so served.

This defendant would show that none of these persons is or was at the time of such service either the president, vice president, secretary, or treasurer, or the general manager or local agent of the said defendant, and reference is hereby made to their affidavits to that effect on file in this case.

It is further shown that the defendant, The Chicago, Rock Island & Pacific Railway Company, is a foreign corporation, incorporated under the laws of Illinois and Iowa, and is not incorporated under the laws of Texas.

Wherefore, the said defendant moves that the service heretofore had be quashed and held of no avail.

N. H. LASSITER,
ROB'T HARRISON,
Attorneys for Defendant.

The foregoing has the following endorsement, to-wit:

No. 320. Augusta A. Peterson *et al vs.* The C. R. I. & P. Ry. Co. Defendant's motion to quash service. Filed 8th day of Nov. 1904. J. H. Finks, Clerk, By J. B. Finks, Deputy.

17 *Affidavit of S. B. Hovey.*

Filed November 8th, 1904.

THE STATE OF TEXAS, *County of Tarrant:*

Now comes S. B. Hovey, who being first duly sworn by me, says upon oath that he is the S. B. Hovey upon whom a citation was served on August 2nd, 1904, in the suit of Augusta A. Peterson against The Chicago, Rock Island & Pacific Railway Company, No. 320 in the Circuit Court of the United States for the Northern Dis-

trict of Texas; and he says upon oath that he is not, and was not at the time of the service of the said citation, nor at the time of the happening of the accident involved in the said suit, nor had he been at any time since, either the General Manager or Local Agent, or the President, Vice President, Secretary or Treasurer of the said The Chicago, Rock Island & Pacific Railway Company.

S. B. HOVEY.

Subscribed and sworn to before me by the said S. B. Hovey on this 5th day of November, 1904.

HODGE CRENSHAW,
[SEAL.] *Notary Public, Tarrant Co., Texas.*

The foregoing has the following endorsement, to-wit:
No. 320. A. Peterson *vs.* C. R. I. & P. Ry. Co. Affidavit of S. B. Hovey. Filed 8th day of Nov. 1904. J. H. Finks, Clerk, By J. B. Finks, Deputy.

18 *Affidavit of F. E. Merrill.*

Filed November 8th, 1904.

THE STATE OF TEXAS, *County of Tarrant:*

Now comes F. E. Merrill, who being duly sworn, says upon oath that he is the F. E. Merrill upon whom a citation was served on August 2nd, 1904, in the suit of Augusta A. Peterson against The Chicago, Rock Island & Pacific Railway Company, No. 320, in the Circuit Court of the United States for the Northern District of Texas; and he says upon oath that he was not at the time of the service of said citation, nor at the time of the happening of the accident involved in said suit, nor has he at any time since been the local agent, nor any character of agent, of the said The Chicago, Rock Island & Pacific Railway Company.

F. E. MERRILL.

Subscribed and sworn to before me by the said F. E. Merrill, on this 5th day of November 1904.

HODGE CRENSHAW,
[SEAL.] *Notary Public, Tarrant Co., Texas.*

The foregoing has the following endorsement, to-wit:
No. 320. A. Peterson *vs.* C. R. I. & P. Ry. Co. Affidavit of F. E. Merrill. Filed 8th day of Nov. 1904. J. H. Finks, Clerk, By J. B. Finks, Deputy.

19 *Affidavit of M. E. Sebree.*

Filed November 8th, 1904.

THE STATE OF TEXAS, *County of Tarrant:*

Now comes M. E. Sebree, who being by me duly sworn, says upon oath that he is the M. E. Sebree upon whom a citation was served on August 2nd, 1904, in the suit of Augusta A. Peterson against The Chicago, Rock Island & Pacific Railway Company, No. 320, in the Circuit Court of the United States for the Northern District of Texas; and he says upon oath that he was not at the time of the service of this citation upon him, nor at the time of the happening of the accident involved in this suit, nor has he been at any time since the President, Vice President, Secretary, Treasurer or General Manager, or the Local Agent within Texas of the defendant, The Chicago, Rock Island & Pacific Railway Company.

M. E. SEBREE.

Subscribed and sworn to by the said M. E. Sebree before me, this 5th day of November, 1904.

HODGE CRENSHAW,
[SEAL.] *Notary Public, Tarrant Co., Texas.*

The foregoing has the following endorsement, to-wit:
No. 320. A. Paterson *vs.* C. R. I. & P. Ry. Co. Affidavit of M. E. Sebree. Filed 8th day of Nov. 1904. J. H. Finks, Clerk, By J. B. Finks, Deputy.

20 *Application of Plaintiff for Service of Additional Process.*

Filed October 4th, 1905.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

No. 320.

AUGUSTA A. PETERSON
vs.
CHICAGO, ROCK ISLAND & PAC. RY. CO.

Now come Augusta A. Peterson and Ida Peterson, plaintiffs in the above styled and numbered cause, and show to the court that A. L. Thomas, who resides at number 508 East Belknap St., in the city of Fort Worth, Tarrant county, Texas, and within the Northern District of this Honorable Circuit Court of the United States in Texas, is a train conductor engaged in handling trains for and over the tracks of the Chicago, Rock Island & Gulf Railway Co. in the state of Texas, and the defendant, the Chicago, Rock Island & Pacific

Railway Co. beyond the limits of the state of Texas. That said Thomas is a train conductor as aforesaid, running upon and handling passenger trains for the said defendant the Chicago, Rock Island & Pac. Ry. Co. and does now and has been for many years condu-tor running and handling such trains between the city of Fort Worth, Tarrant county, Texas, and the city of Caldwell, Kansas, running over the tracks of said companies on both sides of the state line, as aforesaid, and is an agent and representative of the defendant company residing in the county of Tarrant and state of Texas, as aforesaid. And that V. N. Turpin, who resides in the city of Fort Worth, Tarrant county, Texas, and within said Northern District of said United States Circuit Court, as aforesaid, is a ticket agent engaged in the selling of tickets and the making of contracts for transportation for and on behalf of the defendant company and is now and has been for many years engaged in seeling tickets and transportation from the city of Fort Worth over the line of said Chicago, Rock Island & Gulf Ry. Co. within the state of Texas, and of the defendant Company beyond the state of Texas, and that each and both of said parties, the said A. L. Thomas and the said V. N. Turpin are agents and representatives of the defendant company residing within the county and state of Texas, as aforesaid, and upon each and both of whom these plaintiffs desire service of pro-
21 cess in addition to the service heretofore had in this case.

Wherefore, they pray that additional citation to defendant be issued herein to be served upon its agents and representatives whose names are hereinabove set out.

STEWART & TEMPLETON,
HUNTER & HUNTER,
Att'ys for Pl't'ff.

The foregoing has the following endorsement, to-wit:
No. 320. Augusta A. Peterson *et al. vs.* C. R. I. & Pac. Ry. Co. Application of plaintiff for service of additional process. Filed 4th day of Octo 1905. J. H. Finks, Clerk, By J. B. Finks, Deputy.

22 In the United States Circuit Court for the Northern District of Texas, at Fort Worth.

The President of the United States of America to the Marshal of the Northern District of Texas—Greeting:

You are hereby commanded to Summon The Chicago, Rock Island & Pacific Ry. Co., by serving A. L. Thomas, a conductor on said road, and V. N. Turpin, a ticket agent thereof, both agents and representatives of said Railway Co., resident Citizens of the County of Tarrant, if to be found in your District, to be and appear before the Honorable Circuit Court of the United States, at the next regular Term thereof, to be holden for the Fifth Judicial Circuit and Northern District of Texas at the Court Room thereof, in the City of Fort Worth, on the first Monday, it being the 6th day of November next, to answer the Petition in Case No. 320, filed

on the 30th day of July, 1904, of Augusta A. Peterson and Ida Peterson, a minor, Plaintiffs against the Chicago, Rock Island & Pacific Railway Company, Defendant.

The nature of the Plaintiffs' demand is as follows, to-wit: Suit for damages in the sum of $30,000.00 for the death of pltff.'s husband, John Peterson, said death alleged to be the result of an accident to said Peterson while he was in deft.'s employ as locomotive engineer and in deft.'s yards at Chickasha, I. T. and was caused by one of Peterson's co-employés negligently and carelessly running an engine upon a dead track on which were 2 engines, on one of which Peterson was working, causing the engines to collide and crushing Peterson between them, bruising him in such manner that he died; and for costs of suit, etc. Pltff. further represents that the Chicago, Rock Island & Pacific and Chicago, Rock Island & Gulf Rys. while separately incorporated are substantially one company, and owned and operated as one company, as is fully shown by Plaintiffs' original petition, a copy of which duly certified is herewith accompanying and here referred to for a more distinct statement of the cause of action herein, of which you will serve the said Chicago, Rock Island & Pacific Ry. Co., by serving A. L. Thomas, a conductor on said road, and V. N. Turpin, a ticket agent thereof, both agents and representatives of said Ry. Co., also with the accompanying certified copy of said petition; and with a true copy of this Writ.

Herein fail not, and due return of this Writ make, on or before the 6th day of Nov'r next, showing how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the Seal of said Circuit Court, at Fort Worth, Texas, this 5th day of October in the year of our Lord 1905, and of American Independence the 130th year.

[SEAL.] J. H. FINKS,
Clerk of Said Circuit Court,
By J. B. FINKS,
Deputy Clerk.

23 [Endorsed:] Marshal's Docket No. 1528. No. —. U. S. Circuit Court, Northern District of Texas, at Forth Worth. Augusta A. Peterson *et al. vs.* C. R. I. & P. Ry. Co. Citation to A. L. Thomas, and V. N. Turpin, Tarrant County. Issued Oct. 5 1905. J. H. Finks, Clerk, By J. B. Finks, Deputy. Returned and filed Oct. 7 1905. J. H. Finks, Clerk, By J. B. Finks, Deputy.

Marshal's Return.

Received this Writ on the 6th day of October, 1905 and I executed the same on the 6th day of October, 1905, by delivering to the within named defendants, A. L. Thomas and V. N. Turpin in Fort Worth, Tarrant Co., Texas, in person, a certified copy of the Petition in this case; also a true copy of this Writ.

GEO. H. GREEN,
U. S. Marshal, N. D. T.,
By W. O. THOMAS, *Deputy.*

Fee, 2 citations	$4.00
Mileage, St. car fare	15
Actual Expense	
Total	$4.10

24 *Supplemental Motion to Quash Service.*

Filed November 17th, 1905.

In the U. S. Circuit Court for the Northern District of Texas, at Fort Worth.

AUGUSTA A. PETERSON
vs.
THE C., R. I & P. RY. CO.

Now comes The Chicago, Rock Island & Pacific Railway Company, and appearing for this purpose solely, files this its supplemental motion to quash the service in this case, it being agreed by counsel that the two motions may be considered as an amended motion, and for ground of such motion shows to the court that V. N. Turpin, upon whom a citation was served in this suit, citing the defendant to appear is not and was not at the time of service of the citation, nor at any time since the institution of this suit, an agent or employé of any kind or character of this defendant, and respectfuliy calls the court's attention to his affidavit to that effect, which is attached to and is made a part of this motion.

Defendant further shows to the court that A. L. Thomas, upon whom a citation was served, summoning the defendant to appear and answer, is not and was not at the time of the service of citation, nor at any other time since the filing of this suit, an agent or employé of any kind of this defendant in Texas, as will appear from his affidavit, which is attached hereto and made a part of this motion.

It is respectfully shown that the service of citation on these two parties is an attempt to obtain service on this defendant, in pursuance of a recently enacted Texas statute providing for service on foreign corporations by serving a citation on agents of the domestic corporation, selling tickets over both lines, and on certain train men having charge of a train running over both lines.

It is respectfully shown that the service contemplated by that statute is insufficient to sustain a personal judgment, in that it is not personal service on the defendant, as it provides for service of citation on persons not employed by the defendant, and who are not in fact agents of the defendant.

Wherefore the defendant prays that the service of citation on the different persons heretofore served be held as insufficient, and that the return of the service be quashed, and this defendant be not required to answer herein.

N. H. LASSITER,
ROBERT HARRISON,
Attorneys for Defendant.

25 The foregoing has the following endorsement, to-wit:—
No. 320 L. Augusta A. Peterson *et al. vs.* C. R. I. & P. Ry. Co. Motion to quash service. Filed 17th day of Nov. 1905. J. H. Finks, Clerk, By J. B. Finks, Deputy.

26 *Affidavit of A. L. Thomas.*

Filed November 17th, 1905.

THE STATE OF TEXAS, *County of Tarrant:*

Now comes A. L. Thomas, and says upon oath, that he is the A. L. Thomas upon whom citation was served in the suit of Augusta A. Peterson *vs.* The Chicago, Rock Island & Pacific Railway Company, on the — day of ——, 1905; and he says upon oath that he is not and was not on the date of service of citation, and has not been at any time since the institution of this suit an agent or employé of The Chicago, Rock Island & Pacific Railway Company, except as stated below:

That he is and has been for a number of years a passenger conductor, residing at Fort Worth, Texas, and running over the line of road of The Chicago, Rock Island & Gulf Railway Company and of The Chicago, Rock Island & Pacific Railway Company, between Fort Worth, Texas, and Caldwell, Kansas. That he is employed by each company while running on its line of road, and paid by each company for the service rendered it. That he runs from Fort Worth, Texas, to the Texas State line over the line of The Chicago, Rock Island & Gulf Railway Company and that from the Texas State line to Caldwell, Kansas, he runs over the line of The Chicago, Rock Island & Pacific Railway Company.

A. L. THOMAS.

Subscribed and sworn to before me, this the 17th day of November A. D. 1905.

E. H. CRENSHAW, JR.,
[SEAL.] *Notary Public, Tarrant Co., Tex.*

The foregoing has the following endorsement, to-wit:—
No. 320 L. Augusta A. Peterson *et al. vs.* C. R. I. & P. Ry. Co. Affidavit of A. L. Thomas. Filed 17th day of Nov. 1905. J. H. Finks, Clerk, By J. B. Finks, Deputy.

27 *Affidavit of V. N. Turpin.*

Filed November 17th, 1905.

THE STATE OF TEXAS, *County of Tarrant:*

Now comes V. N. Turpin, and says upon oath that he is the V. N. Turpin upon whom citation was served on the — day of ——, 190-, in the suit of Augusta A. Peterson *vs.* The C. R. I. &

P. Ry Co.; and he says upon oath that he is not, and was not at the time of the service of citation, nor has he been at any time since the institution of this suit, an agent or employé of any kind or character for The Chicago, Rock Island & Pacific Railway Company further than as is disclosed below:

That he is and has been for a long time the City Ticket agent of The Chicago, Rock Island & Gulf Railway Company, in Fort Worth, Texas, and that in the performance of his duties as such he has sold and customarily sells tickets good for passage over the line of The Chicago, Rock Island and Gulf Railway Company, and any other connecting line which the purchaser desires to travel over, and that he has thus sold tickets over The Chicago, Rock Island & Gulf and The Chicago, Rock Island & Pacific Railway Company's lines.

V. N. TURPIN.

Subscribed and sworn to before me, this 17th day of November A. D. 1905.

E. H. CRENSHAW, JR.,
[SEAL.] *Notary Public, Tarrant Co., Tex.*

The foregoing has the following endorsement, to-wit:—
No. 320 Law. Augusta A. Peterson *vs.* Chicago, Rock Island & Pacific Ry. Co. Affidavit of V. N. Turpin. Filed 17th day of Nov. 1905. J. H. Finks, Clerk, By J. B. Finks, Deputy.

28 *Order of Court Sustaining Motion to Quash Service.*

Entered November 21st, 1905.

From the Minutes of the Circuit Court of the United States for the Northern District of Texas, at Fort Worth, November Term, 1905.

No. 320.

AUGUSTA A. PETERSON ET AL.
vs.
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.

NOVEMBER 21ST, 1905.

This cause coming on to be heard upon the motion of the defendant, the Chicago, Rock Island & Pacific Railway Company, to quash the service of citation herein, came the plaintiffs and the defendant by their respective attorneys and announced ready for trial on said issue; and the court having heard the evidence in support of and against said motion is of opinion that the law is for the defendant and that said motion ought to be sustained.

It is therefore ordered and adjudged by the court that said motion be, and the same is hereby sustained, and that the service of citation herein be and the same is hereby quashed and set at naught and that the cost of said motion be taxed against the plaintiffs.

And it appearing to the court that this court has no jurisdiction over the defendant herein, it is further considered, and so ordered that this cause be and it is hereby dismissed for want of jurisdiction over said defendant, and that said defendant recover of plaintiffs all costs in this behalf expended, for which let execution issue.

To which action of the court in sustaining said motion and quashing the service of citation in this cause and in dismissing said cause and taxing the costs thereof against plaintiffs, the plaintiffs then and there in open court excepted.

From Minute Book 3, page 12.

29 *Plaintiffs' Bill of Exceptions.*

December 27th, 1905.

In the United States Circuit Court for the Northern District of Texas, at Fort Worth.

No. 320.

AUGUSTA A. PETERSON ET AL.
vs.
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY CO.

Action at Law.

This is an action at law to recover damages occasioned to the plaintiffs by the death of John Peterson, the husband of the plaintiff Augusta A. Peterson and the father of the plaintiff, Ida Peterson, and whose death is alleged to have resulted from the negligence of the defendant while the said decedent was in the services of defendant as an employé of said Company.

Be it remembered, that on the 21st day of November 1905, the above entitled cause came on for trial before the above entitled court at a regular term thereof upon the defendant's motion and supplemental motion to quash the service of citation herein. The Honorable E. R. Meek, Judge presiding. The plaintiffs Augusta A. Peterson and Ida M. Peterson appeared by their attorneys of record, Stewart & Templeton, and the defendant, The Chicago, Rock Island and Pacific Railway Company appeared by its attorneys of record, N. H. Lassiter and Robert Harrison, and the following proceedings were had:

The said defendant by its said attorneys presented to the court its said original and supplemental motions to quash the service of citation herein for want of jurisdiction over said defendant which motions were as follows, to-wit:

In the Circuit Court of the U. S. for the Northern District of Texas, at Fort Worth.

AUGUSTA A. PETERSON
vs.
THE C., R. I. & P. RY. CO.

Now comes the defendant, The Chicago, Rock Island & Pacific Railway Company, an- appearing in this case only for the purpose of filing motion to quash service, and declining to enter an appearance for any other purpose, shows to the court as follows:

That S. B. Hovey, M. E. Sebree and F. E. Merrill have been served with citations in this case, citing The Chicago, Rock Island and Pacific Railway Company to appear and answer, and that no other person has been served.

This defendant would show that none of these persons is or was at the time of such service either the president, vice president, secretary or treasurer, or the general manager or local agent of the said defendant, and reference is hereby made to their affidavits to that effect on file in this case.

It is further shows that the defendant, The Chicago, Rock Island and Pacific Railway Company is a foreign corporation, incorporated under the laws od Illinois and Iowa, and is not incorporated under the laws of Texas.

Wherefore, the said defendant moves that the service heretofore had be quashed and held of no avail.

N. H. LASSITER,
ROB'T HARRISON,
Attorneys for Defendant.

Filed 8th day of November 1904.

In the U. S. Circuit Court for the Northern District of Texas, at Fort Worth.

AUGUSTA A. PETERSON
vs.
C., R. I. & P. RY. CO.

Now comes The Chicago, Rock Island & Pacific Railway Company and appearing for this purpose solely, files this its supplemental motion to quash the service in this case, it being agreed by counsel that the two motions may be considered as an amended motion, and for ground of such motion shows to the court that V. N. Turpin, upon whom a citation was served in this suit, citing the defendant to appear, is not and was not at the time of service of the citation, nor at any time since the institution of this suit, an agent or employé of any kind or character of this defendant, and respectfully calls the court's attention to his affidavit to that effect, which is attached to and is made a part of this motion. Defendant further shows the

court that A. L. Thomas, upon whom a citation was served, summoning the defendant to appear and answer, is not and was
31 not at the time of the service of the citation, nor at any other time since the filing of this suit, an agent or employé of any kind of this defendant in Texas, *and* will appear from his affidavit, which is attached hereto and made a part of this motion.

It is respectfully shows that the service of citation on these two parties is an attempt to obtain service on this defendant in pursuance of a recently enacted Texas statute, providing for service on foreign corporations by serving a citation on agent of the domestic corporation, selling tickets over both lines, and on certain train men having charge of a train running over both lines.

It is respectfully shown that the service contemplated by that statute is insufficient to sustain a personal judgment, in that it is not personal service on the defendant, as it provides for service of citation on persons not employed by the defendant, and who are not in fact agents of the defendant.

Wherefore the defendant prays that the service of citation on the different persons heretofore served be held as insufficient and that the return of the service be quashed, and this defendant be not required to answer herein.

N. H. LASSITER,
ROBERT HARRISON,
Attorneys for Defendants.

Filed 17th day of November 1905.

Said motion being resisted by said plaintiffs, the following agreed statement *and* facts and other evidence hereinafter set out was introduced upon the hearing of said motions, to-wit:

Agreement.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

AUGUSTA A. PETERSON ET AL.
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

To said Honorable Court:

Come now Augusta A. Peterson *et al.*, plaintiff-, by their
32 attorneys, Hunter & Flood and Stewart & Templeton, and comes also The Chicago, Rock Island & Pacific Railway Company, defendant herein, represented by its attorneys N. H. Lassiter and Robert Harrison, and agree as follows:

The Chicago, Rock Island and Pacific Railway Company is a consolidated corporation, chartered under the laws of Illinois and Iowa. It has been an existing railroad corporation for over twenty years. In June of the year 1892 and for some years prior to that time the said railway Company owned and operated a line of railway

from the city of Chicago in a southwesterly direction through the states of Illinois, Iowa, Missouri and Kansas to Minco, Indian Territory. During the year 1892 this company extended its line from Minco, Indian Territory, in a southerly direction to the north boundary line of Texas in Montague county.

The Chicago, Rock Island and Texas Railway Company was a corporation organized under the laws of Texas on the 15th day of July 1892. It had an authorized capital stock of three million dollars, in shares of one hundred dollars each, of which seven hundred and fifty four shares were subscribed for at the time of its organization. Below is a list of the names of the stockholders and the number of shares of capital stock of this company subscribed for by each, at its original organization:

Name.	Residence.	Shares.
M. A. Low	Topeka, Kansas	745.
W. W. Phelps	" "	1.
C. F. Jilson	" "	1.
A. G. Hastick	" "	1.
W. F. Evans	" "	1.
C. H. Thompson	Hennessey, O. T.	1.
J. T. Harris	Belcher, Texas	1.
H. F. Weber	Bowie, Texas	1.
Z. T. Lowrie	" "	1.
J. H. Matthews	" "	1.
Total		754

At the time this company was organized, M. A. Low was one of the General Attorneys of the Chicago, Rock Island and Pacific Railway Company, and had been for a number of years; W. F. Evans was his Assistant and had been for a number of years; C. F. Jilson was Assistant Treasurer of said company at Topeka, Kansas, and had been for a number of years; C. H. Thompson had been employed in securing right-of-way for the same company. None of the
33 other stockholders had ever been connected in any capacity with The Chicago, Rock Island and Pacific Railway Company.

Under the charter of The Chicago, Rock Island and Texas Railway Company, it was authorized to construct a line of road from the north boundary line of Texas at a point in Montague county in a southerly direction through Montague, Wise and Parker counties; the charter being afterward amended, authorized the construction into Tarrant county. This charter authorized the issuance of first mortgage bonds amounting to fifteen thousand dollars per mile for construction and not exceeding five thousand per mile for equipment.

When the Chicago, Rock Island and Pacific Railway Company constructed its line to a point near the north bank of Red River, north of Montague county, construction work stopped for a period of time. The Chicago, Rock Island & Texas Railway Company began the construction of its line at the north line of the state in Montague county some time after The Chicago, Rock Island and Pacific Rail-

way Company stopped work at a point north of Red River. After construction work began on The Chicago Rock Island and Texas Railway Company south of Red River, The Chicago Rock Island and Pacific Railway Company constructed its line from the point where work had stopped north of Red River, to a connection with The Chicago, Rock Island & Texas Railway *Railway* Company at the State line. The Texas Company finished the construction of its line into Fort Worth in the latter part of 1893. Some of the same contractors who constructed The Chicago, Rock Island and Pacific Railway from Minco south to Red River also took contracts for work on the Texas line.

On the 2nd day of January 1893, after The Chicago, Rock Island & Texas Railway Company had constructed and was operating its line as far south as Bowie, Texas, it entered into an agreement with The Chicago, Rock Island & Pacific Railway Company, a true copy of which is hereto attached and marked "Exhibit A" for identification. This agreement went into effect immediately after it was executed, and was acted upon and observed by said companies until the 14th day of April 1903, when the same was canceled under authority of the Board of Directors of each Company by a written agreement, a true copy of which is hereto attached, marked "Exhibit B" for identification.

After The Chicago, Rock Island and Texas Railway Company had constructed its line, it issued first mortgage bonds to the ex-
34 tent of fifteen thousand dollars per mile thereon, and these bonds were purchased by The Chicago, Rock Island and Pacific Railway Company, for which it paid the Texas line one hundred cents on the dollar. The Chicago, Rock Island & Texas line cost a large sum of money in excess of the amounts for which it issued bonds, which additional cost was paid by application of money subscribed by stockholders and by borrowing from The Chicago, Rock Island & Pacific Railway Company, which money so borrowed has long since been returned with interest.

At the time The Chicago, Rock Island and Pacific Railway Company constructed its line to Red River there was no town or city at that particular point, but there were towns and cities south, east and west of there in the state of Texas, and a railroad line, being a part of the Missouri, Kansas & Texas Railway of Texas, nine miles south of that point.

When The Chicago, Rock Island & Texas Railway Company was first organized its general offices were located at Bowie, Montague county, Texas, and remained there for some time, until the charter was amended, removing them to Fort Worth. The first general officers elected by The Chicago, Rock Island & Texas Railway Company, and their residences, were as follows: M. A. Low, Topeka, Kansas, President; J. C. McCabe, Bowie, Texas, General Freight Agent; and H. F. Weber, Bowie, Texas, Vice-President, Superintendent, Secretary and Treasurer. All these men, prior to the time they were elected officials of The Chicago, Rock Island and Texas Railway Company had been employed in some capacity by The Chicago, Rock Island and Pacific Railway Company. In 1893 S. B. Hovey was

elected Vice-President of the Texas company and remained the Vice-President and Superintendent of The Chicago, Rock Island & Texas Railway Company from that date until it was sold out under an Act of the Legislature in 1903. Mr. M. E. Sebree, who was served with citation in this case, was for a number of years and until the date of its sale, Trainmaster of The Chicago, Rock Island and Texas Railway Company and Assistant Trainmaster of The Chicago, Rock Island & Pacific Railway Company, with jurisdiction on that line up to Chickasha, Indian Territory. Prior to the time he was employed by The Chicago, Rock Island & Texas Railway Company he had been employed by The Chicago, Rock Island & Pacific Railway Company as brakeman, conductor, etc. M. A. Low of Topeka, Kansas, remained the President of The Chicago, Rock Island & Texas Railway Company from its organization until the 8 day of Nov. 1900, during all of which time he was one of the General Attorneys of The Chicago, Rock Island & Pacific Railway Company.

The Chicago, Rock Island & Texas Railway Company never issued or sold any equipment bonds, but before it was sold out under special act of the Legislature to The Chicago, Rock Island and Gulf Railway Company, it had purchased and was the owner of between one thousand and twelve hundred freight cars of various kinds. During the time it had no equipment of its own, it rented rolling stock from various railway companies, but principally from The Chicago, Rock Island and Pacific Railway Company, and paid therefor prices prevailing between other lines of railway in the state of Texas.

After The Chicago, Rock Island and Texas Railway Company constructed its line into Fort Worth from Bowie and after the execution of the contract between it and The Chicago, Rock Island & Pacific Railway Company, of date January 2nd, 1893, most of the passenger and freight trains running over its line from Red River to Fort Worth and from Fort Worth to Red River, were operated beyond its lines as the trains of The Chicago, Rock Island & Pacific Railway Company. The employés operating these trains were under the control of and paid by The Chicago, Rock Island & Texas Railway Company while working on its line, and they were also under the control of and paid by The Chicago, Rock Island & Pacific Railway Company while on its line. The equipment in the various trains went as far north as the business justified, some of the passenger equipment going as far as Chicago and some to Kansas City, while the freight equipment stopped at points beginning at Chickasha and from there north wherever the freight was destined. The passenger equipment coming south stopped at Fort Worth and the freight equipment, where the freight was handled in car load lots, went to destination, wherever that might be.

Whenever necessary the Texas Company would operate a local train to handle freight between Fort Worth and Red River but as a general rule the through service maintained took care of this business. It operated a local freight and passenger train between Bridgeport and Jacksboro and afterward to Graham from the time that branch was built until it was sold out, which was several years. On the through freight trains the run made by the crews was from

Fort Worth to Chickasha and on the through passenger train the run made by the crews was from Fort Worth to Caldwell,
36 Kansas, these crews being handled and paid as above set forth. Outside the Pullman cars, which were in each passenger train, nearly all the passenger equipment used by The Chicago, Rock Island & Texas Railway Company belonged to The Chicago, Rock Island & Pacific Railway Company for which it paid rental as provided for under the terms of the contract herein first referred to.

Defendant's witnesses will testify that the Texas Company paid no part of the cost of operating the Chicago, Rock Island & Pacific Railway, nor did the Pacific Company pay any part of the cost of the operation of The Chicago, Rock Island & Texas Railway, nor did either of them participate in the earnings of the other. The relationship between the companies is fully disclosed by the terms of the contract dated January 2nd, 1893, which was observed up to the time of its cancellation.

The passenger conductors, brakemen and train guards wear regular train uniforms and on the lapel of the coat are the words "Rock Island," and on the cap is the word "Conductor," "Brakeman" or "Porter." Any member of these train crews, while working on the line of the Texas Company may be discharged by the proper officer of that company; and while working on the line of the Pacific Company may be discharged by the proper officer of that company. Either company of course employs additional men when needed.

At the time the contract of January 2nd, 1893, was canceled The Chicago, Rock Island & Texas Railway Company was operating about an hundred and forty miles of road, and The Chicago, Rock Island & Pacific was operating about three thousand three hundred miles. For a considerable time after The Chicago, Rock Island & Texas Railway Company was built into Fort Worth it employed and maintained at its Fort Worth office a train dispatcher who gave orders for the movement of trains over its line, but as a matter of economy this was abolished, and the Texas Company paid a part of the salary of the train dispatcher located at Chickasha to give orders for the movement of trains over its rails.

On the 22nd day of September, 1903, The Chicago, Rock Island & Texas Railway Company, under authority of a special act of the Legislature known as Senate Bill No. 161, was purchased and absorbed by The Chicago, Rock Island & Gulf Railway Company, and since that time has ceased to exist as a railroad or to do any business as such.

37 At the time the Gulf Company purchased the Texas Company it had constructed and was operating a line of road from Fort Worth in Tarrant county to Dallas in Dallas county. The Chicago, Rock Island & Gulf Railway Company now owns and operates three hundred and eighty six miles of road, all of which is located inside the state of Texas. It does not own any railroad outside the state of Texas. It owns at the present time about sixteen hundred cars, including ballast, refrigerator and cattle cars, twenty locomotives, and eight cabooses, but does not own any passenger

equipment other than the Pullman cars which are used in each of its passenger trains, it rents its passenger equipment from The Chicago, Rock Island & Pacific Railway Company, and pays therefor current rental charged by connecting lines in Texas. The train crews on both the through passenger and freight trains are handled in the same way that they were when the line into Fort Worth was operated by The Chicago, Rock Island & Texas Railway Company, but The Chicago, Rock Island & Gulf Railway Company is now operating in many places local trains between local points in Texas.

The following is a list of stockholders and the amount of stock of The Chicago, Rock Island & Gulf Railway Company owned by each:

Wm. Wesley Johnson	3850
S. B. Hovey	1
N. H. Lassiter	1
J. C. McCabe	1
W. G. Newby	1
H. C. Holloway	1
J. B. Wilson	1
W. B. Leeds	1
B. L. Winchell	1
Robert Mather	1
H. B. Low	1
Total	3860

Mr. Wm. Wesley Johnson is a resident of New York, N. Y.; Messrs. S. B. Hovey, N. H. Lassiter, J. C. McCabe, W. G. Newby and H. C. Holloway are residents of Fort Worth, Texas; Mr. J. B. Wilson is a resident of Dallas, Texas; Messrs. W. B. Leeds, B. L. Winchell and Robert Mather are residents of Chicago, Illinois; Mr. H. B. Low is a resident of El Reno, Oklahoma.

The Chicago, Rock Island & Gulf Railway Company is operating under a lease that part of the line of The Chicago, Rock Island & Pacific Railway Company which begins at the north boundary line of the state of Texas, extending northward to the town of Terral, Indian Territory, a distance of about 1 1/6 miles.

38 Blank passes, properly signed by different railroads, including the Chicago, Rock Island & Pacific, Texas & Pacific, Houston & Texas Central and other lines, are sometimes placed with S. B. Hovey, and when so placed he has the permission of such line to fill in the names of parties and countersign the pass, and when so countersigned such pass is recognized by the line over which it is issued. The local ticket agents of The Chicago, Rock Island & Gulf Railway Company sell coupon tickets over The Chicago, Rock Island & Pacific Railway Company's line and nearly all other lines in the United States, which tickets are duly honored by the respective roads over which they read. The Chicago, Rock Island & Gulf Railway Company operates only one passenger train each way daily between Fort Worth and Dallas, while it operates two trains each way from Fort Worth north. It operates also only

a local freight service between Fort Worth and Dallas, but no through freight service. Proper officials of The Chicago, Rock Island & Gulf Railway Company and of The Chicago, Rock Island & Pacific Railway Company exchange reports with each other as to the amount of exchange business done.

No dividends were ever paid on the stock of The Chicago, Rock Island & Texas Railway Company, and none have been paid on that of The Chicago, Rock Island & Gulf Railway Company; the net earnings of The Chicago, Rock Island & Texas Railway Company were put into betterments and improvements, and the same is the case with The Chicago, Rock Island and Gulf.

In 1897, L. G. Hastings, then secretary of The Chicago, Rock Island and Texas Railway Company reported to the Interstate Commerce Commission that The Chicago, Rock Island and Texas Railway Company was controlled by The Chicago, Rock Island & Pacific Railway Company, through the ownership of a majority of its bonds. In 1899 he reported it as controlled by the Pacific Company through its ownership of a majority of its capital stock.

On the 2nd day of August 1904, M. E. Sebree, who resides in Ft. Worth, Texas, was trainmaster of The Chicago, Rock Island and Gulf Railway Company, and was also Assistant trainmaster of The Chicago, Rock Island and Pacific Railway Company between the north line of Texas and Chickasha, Indian Territory. He is paid by the Gulf Company for the work he does for it and by the Pacific Company for the work he does for it. S. B. Hovey is Vice President and Superintendent of The Chicago, Rock Island and Gulf Railway Company, and will testify that he is not connected with, nor does he perform any service for any other railroad.

After making certain changes and addition, The Chicago,
39 Rock Island and Gulf Railway Company adopted the book of rules issued by The Chicago, Rock Island and Pacific Railway Company for the control of the operation of its line, and such rules are now in force. The cars and engines belonging to the Chicago, Rock Island and Gulf Railway Company when in need of repairs, have the work done at its shops in Fort Worth and Dalhart, if the cars and engines are convenient to these two points; otherwise, the work is done at some other convenient place either on or off the line of The Chicago, Rock Island and Pacific Railway Company wherever the cars or engines may be at the time the repairs are needed.

On the 2nd day of August 1904, The Chicago, Rock Island and Gulf Railway Company had a different president and altogether different executive officers from any of the lines above listed as included in the Rock Island System. The Chicago, Rock Island and Gulf Railway Company does not now and never has paid any part of the salary of any officer of The Chicago, Rock Island and Pacific Railway Company, or of any of the lines named as constituting the Rock Island System.

Before The Chicago, Rock Island & Gulf Railway Company purchased The Chicago, Rock Island & Texas Railway Company, The Chicago, Rock Island & Mexico Railway Company and The Choctaw, Oklahoma & Texas Railroad Company, M. E. Sebree was train

master of The Chicago, Rock Island & Texas Railway Company and division train master of The Chicago, Rock Island & Pacific Railway Company, with jurisdiction to Chickasha, Indian Territory. Since the purchase by the Gulf Company of the above named Texas lines Mr. Sebree's jurisdiction extends over what were The Chicago, Rock Island & Mexico Railway Company and The Choctaw, Oklahoma & Texas Railroad Company, otherwise there has been no change in his employment or jurisdiction for the past five to ten years.

The Chicago, Rock Island & Gulf Railway Company pays a portion of the salary of a joint train dispatcher located at Chickasha, Indian Territory, under the same character of arrangement which existed between The Chicago, Rock Island & Texas Railway Company and The Chicago, Rock Island & Pacific Railway Company. This train dispatcher in giving orders for the handling of trains on The Chicago, Rock Island & Gulf Railway Company is subject to the control, direction and supervision of the executive officers of The Chicago, Rock Island & Gulf Railway Company as if exclusively employed by it.

40 The rails of The Chicago, Rock Island & Gulf Railway Company on the line running from Fort Worth north connects at the state line with the rails of The Chicago, Rock Island & Pacific Railway Company. The point of connection is somewhere near the middle of Red River on a bridge. At this particular point there is no town, station, or turnout, and the trains going in either direction do not stop at said point. It was not possible to build a town or station at the exact point of connection.

For the purpose of proving any fact not herein stated either party to this suit may introduce in evidence any of the depositions taken by either party in the case of J. D. Buie against the C. R. I. & P. Ry. Co. *et al.*, No. 2406, in District Court, Montague county, Texas, subject to any objection which may or can be urged to said depositions the same as if they had been originally taken in this suit.

Specially reserving the right to object to the introduction of any or all of the foregoing because of immateriality, irrelevancy or incompetency, we agree that it may be used as evidence in above case by either party thereto.

This Dec. 14th 1904.

N. H. LASSITER &
ROB'T HARRISON,
Att'ys for Def'ts.
STEWART & TEMPLETON,
SAM J. HUNTER,
Atty's for Pl't'ff-.

No. —.

AUGUSTA A. PETERSON ET AL.
vs.
C., R. I. & P. RY. CO., Def't.

It is further agreed that A. L. Thomas, upon whom process has been served herein as conductor and agent of defendant, was at the

date of said service and is now and has for many years been a conductor running on and handling passenger trains for the defendant, the Chicago, Rock Island & Pacific Ry. Co., the Chicago, Rock Island & Texas Ry. Co., and later on the Chicago, Rock Island & Gulf Ry. Co. after its purchase of the Texas Company, running and handling such trains between Fort Worth, Texas, and Caldwell, Kan. That the run of said Thomas is now and has been from
41 Fort Worth, Texas, to Caldwell, Kan., as aforesaid on both sides of the state line, and that Caldwell, Kan., is the end of the first passenger division on said lines north of Fort Worth; and it is further agreed that V. N. Turpin, upon whom process was served herein as the ticket agent of the defendant company was at the date of the service of said process and has been for a long time ticket agent of the Chicago, Rock Island & Gulf Ry. Co., at Fort Worth engaged in selling tickets for the said Chicago, Rock Island & Gulf Ry. Co. over its lines and also over the lines of the Chicago, Rock Island & Pacific Ry. Co., and all of its connections.

It is further agreed that the facts are that "Thomas is carried on the Pac. Co.'s pay roll and paid for services rendered while on that Co.'s line north of the Texas state line; and is carried on the Gulf Co.'s pay roll and paid by the Gulf Co. for services rendered on its line south of the Texas state line; and that Turpin is carried on the Gulf Co.'s pay roll alone, and is not carried on the Pac. Co.'s pay roll and is not an agent of the Pac. Co. unless the above stated facts make him one.

STEWART & TEMPLETON,
HUNTER & HUNTER,
Att'ys for Plaintiffs.
N. H. LASSITER AND
ROB'T HARRISON,
Att'ys for Defendant.

Nov. 13, 1905.

EXHIBIT "A."

Articles of Agreement, made and entered into this 2nd day of January 1893, by and between the Chicago, Rock Island and Pacific Railway Company a corporation organized and existing under the laws of the states of Illinois and Iowa, hereinafter called the Rock Island Company, party of the first part, and The Chicago, Rock Island and Texas Railway Company, a corporation organized and existing under the laws of the state of Texas, hereinafter called the Texas Company, party of the second part, witnesseth:

I.

Said Rock Island Company owns and operates, among other lines of railway, a line of railway extending from the city of Chicago, in the state of Illinois, to a point on the south line of the Chick-
42 asaw Nation, in the Indian Territory, where it connects with the railway of the Texas Company.

II.

The Texas Company owns and operates a railway from the point of connection with the railway of said Rock Island Company, on the line between the state of Texas and the Indian Territory, extending thence in a southerly direction through the county of Montague to the city of Bowie, Texas, and is engaged in the construction of its railway between said city of Bowie and the city of Weatherford, in the county of Parker, state of Texas, and proposes to construct branches therefrom and extensions thereof, and desires to raise money to be applied thereto by the sale of it first mortgage bonds. It also desires to make a permanent arrangement with the Rock Island Company for the exchange of traffic.

Therefore, in consideration of the premises and of the several covenants, promised and agreements hereinafter set forth, the parties do covenant, promise and agree with each other as follows:

Article I.

For the purpose of avoiding unnecessary repetition, as well as misapprehension, in the construction and performance of the covenants and agreements hereinafter set out, it is agreed:

SECTION 1. The word "traffic," when used in these articles, shall be taken as equivalent of the phrase, "passengers and property received for transportation." The phrase "through traffic" shall be taken as the equivalent of "traffic which can be transported with reasonable directness from the point of shipment to the point of destination, over a line composed in whole or in part, of portions of the railways of each of the parties hereto;" and "local traffic" as the equivalent of "traffic which can be transported on the most direct line from the point at which it shall originate to the point to which it shall be destined, wholly over the railway of one of the parties hereto;" the phrase "through line" as the equivalent of "a line composed in whole or in part of some portion of two or more railways over which through traffic, as above defined, can be transported;" the "point at which traffic originates," and "originating point" as the equivalent of "the place at which traffic is delivered by the owner or consignor to a common carrier for carriage over a through line;"

"the point of destination" as "the point at which such traffic
43 shall be delivered to the consignee."

SECTION 2. It is declared to be the purpose of the parties hereto, by the execution of these articles and the performance of the several covenants, promises and agreements herein set out, to establish and operate through lines of railway, which shall connect, when the same can be done with reasonable directness, all points on the lines of both of the parties hereto, treating all railroads with which either party shall have any traffic or running arrangements, or in which it shall have any leasehold interest, as a part of the line of the party hereto with which it is so related, and to secure the operation of all said lines as to through traffic, as they should be operated if all were owned by one corporation.

Provided, however, that nothing herein shall be so construed as to confer upon any railway company which may have a railroad connecting with the lines of either of the parties hereto any rights or privileges otherwise than upon and during the election and direction of the parties hereto, or as a successor or assignee of one of the parties hereto.

Article II.

The Rock Island Company covenants, promises and agrees with the Texas Company:

SECTION 1. That it will purchase of the Texas Company its bonds, when they shall be offered to it by said Texas Company, to an amount not exceeding fifteen thousand dollars per mile for railway which shall have been actually constructed by said Texas Company. It will also purchase from said Texas Company all first mortgage bonds which shall be issued by it and secured by said first mortgage, payable on the 1st day of January, A. D. 1933, with interest at the rate of six per centum per annum, for the equipment of said railroad to an amount of par value equal to five thousand dollars per mile for railway actually constructed, not exceeding, however, in such par value the actual amount expended in the purchase of such rolling stock. It will pay for all bonds purchased of the Texas Company the par value thereof, in cash at the time of the delivery of the bonds.

SECTION 2. That it will, so far as it lawfully can, deliver to the railway of the Texas Company all west bound traffic which may be received by it for transportation, to any point which can be reached with reasonable directness by through lines composed in whole
44 or in part of some portions of the railways of the parties hereto, and that it will make all lawful and reasonable efforts to secure the transportation of all such through traffic which may be received by it over such through lines.

SECTION 3. It will furnish freight cars for the transportation of through traffic as nearly as shall be practicable in the proportion of its mileage to the entire mileage over which such traffic shall be moved between the points where it shall be received on the railways of the parties hereto and the points of destination or delivery to a connecting carrier.

SECTION 4. It will receive from the Texas Company all through traffic which said Texas Company shall deliver to it in the performance of its covenants, promises and agreements herein contained; and that it will transport the same to destination when such destination is upon any of its own railways, or to the proper connecting carrier, when such destination is beyond its own line.

Article III.

The Texas Company covenants, promises and agrees with the Rock Island Company as follows:

SECTION 1. That it will, so far as it lawfully can, deliver to the railway of the Rock Island Company, at the most accessible or con-

venient points, all eastward bound through traffic which may be received by it for transportation to any point which can be reached with reasonable directness by a through line which is composed in whole or in part of a portion of the railways of the parties hereto; and that it will make all lawful and reasonable efforts to secure the transportation of all such through traffic which may be received by it over such through lines.

SECTION 2. That it will receive from the Rock Island Company at the point of junction, such west bound through traffic as shall be offered to it by said Rock Island Company, at such points, and will safely and promptly transport and deliver the same to destination if upon its own railway, or to connecting common carrier when the point of destination is beyond its own line.

SECTION 3. It will furnish freight cars for transportation of through traffic, as nearly as shall be practicable, in the proportion of its mileage to the entire mileage over which such traffic shall be moved between the point at which it shall be received on the railway of the parties hereto and the point of destination or delivery to a connecting carrier.

Article IV.

The parties hereto mutually covenant, promise and agree:

SECTION 1. Each will construct and maintain its railways and appurtenances thereto belonging, in such condition as will enable it to promptly and safely transport and deliver all through traffic which may be delivered to it for transportation over any through line hereby established.

SECTION 2. All traffic which shall be received on the railway of either party hereto shall be transported over the most direct line, from the points at which it shall be received to the points to which it shall be destined, or be delivered to a connecting carrier not a party herein.

SECTION 3. All through traffic received for transportation over any through line hereby established shall be waybilled from the point at which it shall be received on any railway of either party hereto to the point of destination, if upon any such railway, or to the point at which it shall be delivered to a connecting line.

SECTION 4. Each party shall control the movement of traffic on its own railways, and defray all expenses which may be incurred in moving and handling the same while under its control.

SECTION 5. Time schedules for running through passenger, freight and express train, shall always be made and agreed upon by the parties, and shall be so made as to connect from the line of one railway to the line of the connecting railway without delay or hindrance; but it is distinctly understod that in making such schedules, the convenience of all parties shall be regarded, and that the through trains shall not be so arranged as to connect with any train operated by either one of the parties on its own railway to the serious prejudice of the other party, except upon just compensation to the parties so prejudiced. If the parties shall not be able to agree upon the establishment, modification, alteration or abrogation

of any schedule, either may require that the matter in dispute shall be determined by reference, as hereinafter provided.

SECTION 6. The rates on all east bound through traffic which shall pass over any through line hereby established, shall be fixed from time to time by the Texas Company, and the rates on west bound through traffic shall be fixed by the Rock Island Com-
46 pany. If either party shall at any time feel aggrieved by any rate fixed by the other, it may make such grievance the basis of a complaint, which shall be determined by reference as hereinafter provided.

SECTION 7. All through rates shall be pro-rated between the parties hereto upon the basis of the mileage over which such traffic shall be transported, counting every mile of the railroad of the Texas Company as one and one-half miles, and every mile of the railroad of the Rock Island Company as one mile:

Provided, that either party hereto may, at the end of each period of five years, demand a readjustment of the division of through rates, and in case the parties hereto cannot agree upon such readjustment of such division, it shall be determined by reference, as hereinafter provided.

SECTION 8. Full and accurate accounts shall be kept by each party, showing the kind and amount of through traffic which has passed over its railway, the places where it was received and those where it was delivered to the consignee, or to a line connecting with the through lines hereby established, with the amount received for transporting the same. A statement of its own account from the first to the last days of each month, both inclusive, shall be delivered by each party to the other, within twenty days immediately succeeding the last day of the month covered by such statement. Each company shall have the right by its attorney or agent to examine at any time during business hours, on business days, the books, accounts, and papers of the other party hereto, relating to the through business received and transported, and shall also have the right to take transcripts of such books, accounts and papers. When statements are not disputed they shall be adjusted and balances paid within five days after the exchange of statements is completed. Balance due on account of through traffic shall be promptly paid without regard to other accounts which may be pending between the parties.

The Texas Company will also keep a full, true and accurate account of its receipts from all sources, and its disbursements for all purposes; and exhibit the same upon demand to the Rock Island Company or its duly authorized agent.

SECTION 9. Each of the parties will furnish its quota of cars for the transportation of through traffic so that the mileage shall be equalized as nearly as shall be practicable, and if any party shall furnish cars in excess of its proportion, it shall be entitled to
47 compensation for such excess at the rates usually allowed for car service. The Rock Island Company will, on the request of the Texas Company, furnish all such mail, passenger and baggage cars as may be needed in transporting mails, baggage, and

passengers over the railway of the Texas Company, together with such engines and other equipment as may be necessary to the operation of said Texas Company, and shall receive for the use of the same the compensation usually allowed at the time in the state of Texas for such use.

SECTION 10. Liability for damage to persons or property in transit over the through lines hereby established shall be borne and paid by the party upon whose railway the damage shall occur. When the location of the cause of the injury is concealed or unknown, the damage sustained shall be borne and paid by the parties who share in the through rates charged for the transportation thereof, in the proportion in which such rates shall be divided.

SECTION 11. Cars of one of the parties hereto receibed on the line of the other, shall be promptly returned to the other, preference always being given to loaded cars. All carload freight shall be sent over the lines of the parties hereto without transfer, when the cars in which traffic is loaded are in good condition.

SECTION 12. The parties will join in operating through trains for the transportation of through traffic, and each will furnish power to move the same over its own tracks.

SECTION 13. If any difference shall arise as to the construction of these articles, or in reference to the performance of any covenant, promise or agreement herein contained, either party may demand a decision of the same by referees. The party demanding the reference shall serve upon the other party a written notice of such demand, and the name of one disinterested person chosen by the demandant as referee. The party so notified shall, within ten days after receiving such notice, select a disinterested person to act as referee. If the party duly notified shall neglect or refuse to select a referee, within ten days after receiving such notice, the referee chosen shall select an addition- referee. The referees thus chosen shall fix a time and place for the hearing and shall give the parties reasonable notice thereof. At the time and place named they shall proceed wth the hearing, unless it shall be continued for cause shown. If the referees thus chosen shall unani-
48 mously agree upon an award or decision, and reduce the same to writing, it shall be binding and conclusive upon the parties. If they cannot agree, they shall make a statement of the facts which are not disputed and then selected a disinterested person as the third referee. To the board thus constituted shall be submitted the agreed statement of facts and such evidence as the parties may produce, concerning the disputed matters, reasonable opportunity to be heard to be given to each of the parties. The award or decision of the majority of the board thus constituted when reduced to writing and served upon all the parties, shall be binding and conclusive upon each.

SECTION 14. No differences which may arise, as to the construction or performance of any of the covenants, promises, or agreements herein contained shall affect, while it remains undetermined, the manner of transacting business pursuant to these articles; but 't shall be transacted and settlements and payments made as before

the existence of such difference; and when it is finally determined by reference, as above provided, or otherwise, payments and restitution shall be made by the respective parties, as may be required by the award of the referees, or provided in the agreement of adjustment, as the case may be.

SECTION 15. If for any reason any of the covenants, promises or agreements in any of these articles expressed shall be adjudged void, such adjudication shall not affect the validity or obligation of any other covenant, promise or agreement which is in itself valid. A controversy as to the validity or construction of any covenant, promise or agreement shall not delay the performance of any other. In the event of the failure in law of any of the covenants, promises or agreements herein contained, steps shall be taken, and such contracts shall be made as shall be advised by counsel, to carry into effect the purposes and intent of this agreement.

SECTION 16. This contract shall be obligatory on the parties for a term of nine hindred and ninety-nine years from the first day of January A. D. 1893; and the Rock Island Company is expressly authorized to assign and transfer its interest in the same by mortgage or other conveyance of its railway and its railway property.

In witness whereof, said The Chicago, Rock Island and Pacific Railway Company, and the Chicago, Rock Island and Texas Railway Company, have caused their corporate seals to be im-
49 pressed hereon, and the signatures of their presidents and secretaries to be hereto affixed, the day and year first above written.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,

(Signed) By R. R. CABLE, *President.*

Attest:

(Signed) W. G. PURDY, *Secretary.* [SEAL.]

THE CHICAGO, ROCK ISLAND AND TEXAS RAILWAY COMPANY,

(Signed) By M. A. LOW, *President.*

Attest:

(Signed) HARRY F. WEBER, *Secretary.* [SEAL.]

EXHIBIT "B."

THE STATE OF TEXAS, *County of Tarrant:*

Know all men by these presents: Whereas, heretofore, on to-wit: the 2" day of January A. D. 1893, a traffic contract was entered into by and between the Chicago, Rock Island & Pacific Railway Company, a foreign corporation, signing by its president, R. R. Cable, and the Chicago, Rock Island & Texas Railway Company, a Texas railroad corporation, signing by its president, M. A. Low, and

Whereas, the Board of Directors of each of said companies have

authorized and directed the annullment and cancellation of said contract.

Now, therefore, the said railway companies hereby mutually agree, in consideration of the benefits that will accrue to each on account of the annullment and cancellation of said contract, that the same be and it is hereby canceled and annulled, and each party thereto is hereby fully released and relieved from each and every provision and obligation therein contained.

This contract is executed in duplicate.

In testimony whereof, witness the signature of each of the parties hereto, by its proper officer, attested by its secretary, on this the 14 day of April A. D. ~~1903.~~ 1903.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,

By —— ——.

Attest:

—— ——,

Secretary.

CHICAGO, ROCK ISLAND & TEXAS RAILWAY COMPANY,

By —— ——.

Attest:

—— ——,

Secretary.

50 The plaintiffs introduced in evidence the Twenty-fourth Annual report of the Chicago, Rock Island & Pacific Ry. Co., defendant herein, for the year ending June 30th 1904, to its stockholders and in which the following among other things, appear as a part of said report:

"To the Stockholders of The Chicago, Rock Island & Pacific Railway Co.:

The Board of Directors submit their report of the operations and affairs of the Chicago, Rock Island & Pacific Ry. Co. for the fiscal year ended June 30th 1904. They have included therein, operations and affairs of the operated lines and auxiliary companies forming the "Rock Island System."

In order to make exhibits comparative, the figures for the last preceding year have been restated to meet changed conditions due to the including in this report the operation of the auxiliary companies.

These lines thus forming the Rock Island System are the following:

Mileage Operated.

The Chicago, Rock Island & Pac. Railway	6,760.74
The Chicago, Rock Island & El Paso Railway	111.50
The Chicago, Rock Island & Gulf Railway	386.92

On page 9 of said report, under the head of "Property" and "Franchises," occur the following:

During the year expenditures were made: For construction of extensions and completion of System lines as follows:

Fort Worth, Tex. to Dallas, Tex.	111,371.55
Yarnall, Tex. to Amarillo, Tex.	108,615.64
Jacksboro, Tex., to Graham, Tex.	32,138.96
Red River to Ft. Worth, Tex.	28,013.04
Texhoma (Texas State line) to Bravo, Tex.	9,646.03
Texola (Texas State line) to Yarnall, Tex.	2,328.30

In addition to the expenditures during the year as above, there has been transferred to property account sundry amounts expended prior to July 1st, 1903, for construction of new lines and shops, and purchases of equipment which have been heretofore stated in the system assets as "Advances for construction and equipment;" the property represented by such amounts having been deeded to The Chicago, Rock Island & Pacific Railway Co., or The Chicago, Rock Island & Gulf Railway Co., $23,169.83.

51 There has also been transferred to this account the expenditures made prior to July 1st 1903, for the purchase of shares of capital stock of the Burlington, Cedar Rapids and Northern Railway Company and the Rock Island & Peoria Railway Company, also cost of the stock of the Choctaw, Oklahoma and Gulf Railroad Company in excess of its par value, and the value of bonds of the Chicago, Rock Island and Texas Railway Company, owned by the Chicago, Rock Island and Pacific Railway Company; the value of said property appearing upon balance sheet shown in prior year's report as "Stocks and Bonds of Constituent Companies," $16,446,009.73.

On page 11 of said report, under the heading "New Lines Open for Operation," the following statements are made, viz:

Additions have been made to the operated system — mileage since the last report as follows:

By the Chicago, Rock Island & Gulf Railway Company:

Ft. Worth, Tex. to Dallas, Tex., 33.26 miles opened for operation in December 1903.

Yarnall, Texas, to end of track west of Amarillo, Tex., 18.40 miles opened for operation in November 1903.

Corrections in measurements, Red River to Ft. Worth, Tex., .83 miles.

Operated system mileage was decreased 18.22 miles between Yarnall, Tex. and Amarillo, Texas.

Fort Worth, Tex. to Dallas, Texas.—This line was completed and the line opened for operation by the Chicago, Rock Island & Gulf Ry. Co. December 1st 1903. It is 33.26 miles in length, connecting with the line of the former The Chicago, Rock Island & Tex. Ry. Co. at Ft. Worth and extending to Dallas, where, by an agreement with

the Gulf, Colorado & Santa Fe Railway Co., it has the joint use of the latter company's terminal facilities.

The opening of this line gives the Gulf Company direct entrance into Dallas, enabling it to compete for the traffic of that important commercial center.

On page 12 of said report is the following statement, viz:

System Mileage Under Construction.

By the Chicago, Rock Island and Gulf Ry. Co.:

Amarillo, Tex. to Texas—New Mexico boundary..... 69.87

Amarillo, Tex. to Tucumcari, N. M.—The grading for a considerable portion of this line has been done from Amarillo westward. It was deemed advisable, however, to suspend active con-
52 struction until such time as the business outlook would warrant the expenditure necessary to complete.

Consolidation of Texas Lines.

The Legislature of the state of Texas, by an act passed March 27th 1903, authorized the sale of the railroads and properties of the Chicago, Rock Island and Texas Railway Company, extending from the Red River to Fort Worth, Tex., with a branch from Bridgeport, Tex., to Graham, Tex. The Chicago, Rock Island and Mexico Railway Company extending from the Texas-Oklahoma line near Texhoma to the Texas-New Mexico line at Bravo; and The Choctaw, Oklahoma and Texas Railroad Company, extending from the Texas-Oklahoma line near Texola, Tex., to Amarillo, Tex., to the Chicago, Rock Island and Gulf Railway Company which had constructed a line of railroad from Dallas, Tex. to Fort Worth, Tex., where it connected with the line first named above.

In accordance with the authority granted, the properties referred to were, by appropriate corporate action, deeded to The Chicago, Rock Island and Gulf Railway Company on December 1, 1903.

This consolidation permits the properties in question to be operated by one management instead of four separate sets of officials as heretofore, resulting in economy of operation and greater efficiency in service.

In stating the assets and liabilities of the companies forming the System, the holdings of The Chicago, Rock Island and Pacific Railway Company in the bonds and capital stock of auxiliary lines, together with loans between system companies, have been eliminated from the liabilities and a like reduction made in the value of the assets; the figures as stated, therefore represent the value of the assets and the real liability without duplication.

By Order of the Board of Directors,

B. L. WINCHELL,
President."

The genuineness of this report was conceded.

Plaintiff also introduced in evidence the Second Annuel Report of the Board of Directors to the Stockholders of the "Rock Island Com-

pany" to its stockholders for the year ending June 30th 1904, and in which the following statements appeared, viz:

"To the Stockholders of the Rock Island Company:

53 The Board of Directors herewith submit their report of The Rock Island Company for the fiscal year ended June 30, 1904, together with data and information concerning the affairs of the companies in which your company is interested through ownership of stock.

The Rock Island Company is the owner of the entire capital stock, except directors' shares, of the Chicago, Rock Island & Pacific Railroad Company, a corporation of the State of Iowa.

The Chicago, Rock Island and Pacific Railroad Company owns 695,574.75 shares of the capital stock of The Chicago, Rock Island and Pacific Railway Company, a corporation of the States of Illinois and Iowa, and 286,349 shares of the common capital stock of the St. Louis and San Francisco Railroad Company, a corporation of the State of Missouri.

Each of the two latter companies operates independently its lines of railway and each is interested through the ownership, directly or indirectly, of at least a majority of the capital stock, in certain subsidiary companies, each of which operates its property independently. The lines of the Chicago, Rock Island & Pacific Ry. Co., including lines formerly of the Choctaw, Oklahoma and Gulf Railroad Company, The Burlington, Cedar Rapids & Northern Ry. Co., and the Rock Island & Peoria Ry. Co., together with the lines of its subsidiary companies, namely: The Chicago, Rock Island & Gulf Ry. Co. and The Chicago, Rock Island & El Paso Ry. Co. comprise what is known as the "Rock Island System."

As the Rock Island Company is the owner of the entire capital stock, except directors' shares of the Chicago, Rock Island and Pacific Railroad Company, the income of both companies is included in the following statement:

This report was made by order of the Board of Directors, was dated October 17th 1904, and was signed by Robt Mather, President. Appended to this report as a part of it under the head of "Statements and Exhibits, Rock Island System Lines," was the following statement, to-wit:

On page 23 of said report under the heading of "Rock Island System-State of Mileage Operated:

The Chicago, Rock Island & Gulf Ry. Co.:

Terral, I. T., (Red River) to Dallas, Tex	126.67
Bridgeport, Tex. to Graham Tex	53.29
Texhoma, O. T., to Bravo, Tex. N. M. State line	91.75
Texola, O. T. (Tex. State line) to Amarillo, Tex	112.97
Total Chicago, Rock Island & Gulf Ry. Co	386.68

54 Plaintiff also introduced in evidence a railroad folder of date July 10th 1904, on the back of which was printed in large white letters on a dark back ground:

"Rock Island System."

"Time Table."

And in which appeared the names of the Chicago, Rock Island & Pacific Ry. Co., The Chicago, Rock Island & El Paso Ry. Co., and The Chicago, Rock Island & Gulf Ry. Co., together with a list of the names and residences of the Passenger, Freight and Traveling Agents of said roads respectively, and showing also a schedule of passenger train service on all of said lines.

On the inside cover of said folder is a map, on which is traced or printed in heavy solid black, the lines of the Chicago, Rock Island & Pac. Ry. Co., the Chicago, Rock Island & El Paso Ry. Co., and the Chicago, Rock Island & Gulf Ry. Co., so connected as to show them all belonging to the same system. Said lines all being the same in size and color, and below which said map on said page is printed the following:

"The Rock Island States of America."

"The Rock Island System cover a territory which is 1,000 miles long by 1,000 miles wide, supports a population of more than 21,000,000 people and is capable of supporting a- least four times that many. The area of this territory is as great as the combined area of France, Germany, Italy, Spain, Austria-Hungary, Denmark, The Netherlands, Turkey, Switzerland and Greece, and its productive capacity is greater.

Here are produced more than half the wheat, more than half the corn and nearly half the cotton, silver and gold produced in the United States."

This is the folder referred to by Mr. Hovey in his testimony.

The annual Report of the C. R. I. & P. Ry. Co. above mentioned shows that the Board of Directors of said Company consists of thirteen members, while the executive committee of said company consists of eight members. The Report of the Rock Island Company above mentioned shows that the Board of Directors of said company consists of sixteen members while its finance committee consists of six members. Eleven members of the Board of Directors of the Railway Company are also members of the Board of Directors of the Rock Island Co. Five members of the executive committee of the Railway Company are also members of the finance committee
55 of the Rock Island Company. All of the officers of the Rock Island Company as given in said report of said company were, with two exceptions, shown to be also officers of the Railway Company as disclosed by the report of said company.

These reports show that a majority of the officers and directors of each of said companies are common to both of them.

S. B. HOVEY was introduced by plaintiff as a witness, and testified as follows:

—. ——.

A. I am Vice president and superintendent of the Chicago, Rock Island & Gulf Ry. Co.

Q. How long have you been with this Gulf Railway Co.?

A. Since its existence.

Q. When was that?

A. About two years ago.

Q. It was organized about two years ago?

A. Yes sir.

Q. Prior to that time in what service were you?

A. Chicago, Rock Island & Texas.

Q. That was a Texas corporation?

A. Yes sir.

Q. Has been bought out by the Gulf?

A. Yes sir.

Q. Prior to that time in whose service were you?

A. I was at work for the Chicago, Rock Island and Pacific.

Q. Where?

A. In Kansas.

Q. There was a long contract between these two companies, Chicago, Rock Island and Pacific and Chicago, Rock Island and Texas?

A. A traffic contract.

Q. Those two roads operated under that contract until by virtue of an enabling statute, the Gulf people bought the Texas Company?

A. Yes sir.

Q. Who was Hallock?

A. He is Superintendent now at Chickasha.

Q. How long has he occupied that position?

56 A. Since Mr. Johnson left there.

Q. This is on the line of Pacific?

A. Yes sir.

Q. What position did he occupy prior to that time?

A. Chief dispatcher.

Q. Did he control all the trains in Texas?

A. Just train orders.

Q. Didn't he control the making up of trains and giving the orders?

A. No sir, only the moving of trains, and any train matters.

Q. Didn't he direct where they should pick up a system car and drop another system car and so on?

A. As chief dispatcher, that is a part of his business.

Q. I am talking about his actions as chief dispatcher of the train?

A. Yes sir, he was employed by the Chicago, Rock Island & Gulf.

Q. He was also of the Gulf Company?

A. I just stated he was of the Gulf Company.

Q. Was he also an employé of the Pacific?

A. Yes sir, a joint man.

Q. The trains operated by the C. R. I. & P. Co. and by the C. R. I.

& G. Co. across the state lines do not stop at such lines and charge cars and locomotives and crews there, do they?

A. No sir.

Q. Such trains are operated by the same crews right across the Texas state line without stopping there are they not?

A. Yes sir.

Q. In the general settlement between the Gulf Company and the Pacific Company it is all done on a mileage basis?

A. Yes sir.

Q. Do you know who the stockholders of your company are?

A. Yes.

Q. Who voted it?

A. I voted it at the last meeting.

Q. All the stock?

A. No sir.

Q. How much did you vote the last meeting?

A. Possibly between thirty-eight and thirty-nine hundred *d*hares.

Q. Who gave you the shares?

57 A. Mr. Johnson.

Q. Who is Mr. Johnson?

A. He is a man that owns I think 3850 shares.

Q. Didn't Mr. Johnson hold it as pledgee?

A. I don't know.

Q. Mr. Hovey, when you were applied to for cars and movements of trains do you give directions to the conductors of the Gulf road as to making up trains, what cars to cut out and what to pick up?

A. I don't know that I understand your question.

Q. Suppose I apply to you as a cattle man, want to ship a car, in making up the train do you give orders to the train?

A. I send the order to the Chief dispatcher.

Q. Where is he?

A. Located at Chickasha.

Q. Where?

A. In the Indian Territory.

Q. On the line of the Chicago, Rock Island & Pacific road?

A. Yes sir.

Q. What do you send the orders up there for?

A. Because he is our employé.

Q. He is also an employé of the Pacific road?

A. Yes.

Q. Has full jurisdiction here?

A. As to handling cars; that is what he is paid for.

Q. Then the movement of every train on the Gulf road was directed from Chickasha?

A. Yes sir.

Q. You have posted on your window here, on your agent's office, this big map of the world showing the system of the lines of the Rock Island System as patented or copyrighted in 1902, by the Pacific railroad company, don't you?

A. Yes, representing the route.

Q. You distribute calendars with that printed on them?

A. Yes, advertising the route.
Q. You advertise their line and they advertise yours, do they not? Just answer the question.
58 A. They advertise this line as I tell you, and we pay part of the expense.
Q. You advertise their line?
A. Yes, in soliciting.
Q. Is it not a fact that all the operations on the line of the Gulf are directed by the Chief dispatcher at Chickasha?
A. Yes, most all of them; that is what he is paid for.
Q. Is it not a fact that the daily reports of the cars on your line and everything of that sort are made to the chief dispatcher at Chickasha?
A. Couldn't handle the business without it. Nearly all of our men run on the C. R. I. & P.
Q. Where were you and in what business were you engaged when the Pacific Railway built to Terral, the boundary line of Texas?
A. I was in Harrington.
Q. In whose employ and in what capacity?
A. I was superintendent there of the Chicago, Rock Island & Pacific and resigned there to come here.
Q. Who built the road to Terral?
A. The Chicago, Rock Island & Pacific.
Q. By what instrumentality or through what agent or employés?
A. Mr. Parker, I think, was the man that handled the construction of that line.
Q. This road after it left Terral and came down through Texas was built by the same people?
A. Some of the same construction.
Q. And the money was furnished by the Chicago, Rock Island & Pacific Co. with which to build it?
A. Yes sir.
Q. Was built right on into Texas? Is that true?
A. Yes sir.
Q. Never stopped at Red River at all?
A. It took them some time to build the bridge.
A. Oh, yes, as long as it took them to build the bridge?
A. Yes.
Q. At that time Mr. Low held all the stock except what they called the directors shares, or one share issued to certain individuals
59 to enable them to become directors?
A. Yes sir.
Q. Mr. Low was general attorney for the Pacific?
A. Yes sir.
Q. These directors paid nothing at all for the shares they held, is not that a fact?
A. No sir.
Q. Paid nothing?
A. No sir, they did pay something.
Q. What did they pay?

A. They paid something on each share thet got, or they couldn't hold them.
Q. Didn't get but one?
A. No sir.
Q. How much did they pay?
A. Five per cent.
Q. Your share was $100, and you paid $5.00?
A. I paid five per cent.
Q. It was $100 per share?
A. Yes sir.
Q. How much did Mr. Harris pay, he was another one of the directors?
A. Yes sir.
Q. How much did he pay?
A. He must have paid the same.
Q. Who were the other directors?
A. Harris, Lowry and Matthews.
Q. They were all employés of the Pacific Railway Company except Matthews and one other?
A. No sir, they were not employés.
Q. Besides these, the balance were all employés of the Pacific?
A. I think so.
Q. Now Mr. Hovey, I believe you stated it to be a fact that under this agreement attached to your deposition in the Buie case, that the Chicago, Rock Island & Texas operated under the terms of that agreement?
A. Yes sir.
Q. Up to the time the legislature passed an act authorizing the Gulf Railroad company to buy the Texas railroad company?
60 A. Yes sir.
Q. After the legislature, or about the time the legislature passed that act, the Gulf Company, the present company, which comes to Dallas, was chartered?
A. Yes sir.
Q. Then the Gulf company bought the Texas company and the El Paso company and several others of these roads?
A. Yes, the New Mexico company.
Q. Didn't pay a dollar for them, did they? Not a dollar?
A. That is a matter that was handled by the president.
Q. Who was the president?
A. Mr. M. A. Low.
Q. Was he general attorney for system?
A. He was attorney for the C. R. I. & P.
Q. He was the man who handled that, he didn't live in Texas?
A. No sir.
Q. He was vice president?
A. Yes sir.
Q. The president was gone?
A. Yes sir.
Q. The duty of the vice president devolved upon him?
A. Yes sir.
Q. Mr. Leeds was president of the Gulf Company?

A. When this property was sold, yes; Mr. Low was president when it was organized.

Q. When these roads were sold you was a stockholder in all of them?

A. Yes sir.

Q. What did you get for your stock?

A. Just what I paid in, five dollars.

Q. Ever draw any dividend on it?

A. No sir.

Q. Never been any declared?

A. No sir.

Q. Don't you know it to be a fact that this deal was transacted, negotiated and consummated up here in Chicago by Mr. Low and his associates for the simple reason that The Chicago, Rock Island and Pacific owned all the stock of this Texas Company except
61 a few shares issued to people to enable them to become directors and that is the reason it was all done up there from the controlling power?

A. No sir, I do not.

Q. And yet, being vice president of the Gulf company, with the president absent and a transaction of that magnitude, yet you are unable to tell the court what consideration, if any, was passed?

A. The records will show, I would not undertake to tell.

Q. That was a pretty big transaction, was it not, Mr. Hovey?

A. Yes.

Q. Who consulted you about it, anybody?

A. Yes sir.

Q. Who?

A. The president.

Q. What president?

A. Mr. Leeds. Mr. Low was president a short time before that.

Q. Mr. Leeds was also president of the Pacific Company at that time?

A. Yes sir.

Q. He was also president of the Rock Island Company at that time?

A. I think so.

Q. He was a member of all three Boards of Directors?

A. I think so, he was on our board.

Q. Where did that conversation between you and Mr. Leeds occur?

A. I did not have a conversation with him, I had a letter from him.

Q. What was the contents of that letter?

A. I don't remember exactly.

Q. The Gulf Company was going to take in the other two companies? Just simply informed you of the fact?

A. Yes sir.

Q. Is it not a fact, Mr. Hovey, that the Chicago, Rock Island & Pacific Railway Co. organized and furnished the money for the Chicago, Rock Island & Texas, to enable it to get into Ft. Worth and Texas, and the men ostensibly connected with the Texas road

had no money, had no power to build a railroad, was not railroad men, except as some of them were employés of the Pacific Company? Is not that a fact?

A. No sir, I don't know that it was. Some of the contractors were not railroad men.

62 Q. They were not railroad men, they were not moneyed men?

A. No sir, not what you call moneyed men proper.

Q. Could they build to Fort Worth?

A. No sir, not without getting assistance.

Q. They knew when they organized that company that it was impossible to build that road from Terral to Fort Worth, except the Chicago, Rock Island & Pacific actually built, in the name of the Texas road; is not that a fact?

A. The Chicago, Rock Island & Pacific furnished some of the money, it was got through them.

Q. Didn't they put every dollar?

A. Yes, to build through there.

Q. Is it not a fact that the sale of the Texas road and the El Paso road and the Mexico road to the Gulf Road was all to enable these four different roads simply to consolidate and get under one management, management of the system?

A. Yes sir.

Q. Didn't the Gulf road get orders to buy this road these other three roads from the Chicago, Rock Island and Pacific the holders of its bonds and stocks?

A. I cannot say whether—what the president's idea was or what started him in the first place.

Q. All you know is that the president of the Pacific Company wrote you merely announcing the fact that this was to be done or had been done?

A. Yes sir, if it could be done.

Q. This book you say you recognize here as Form A 327-Rock Island System, list of officers, station agents, etc., May 1st 1903.

A. Yes sir.

Q. Who got up that book?

A. A. Goodnow.

Q. He was the general manager of the Rock Island System?

A. Yes sir.

Q. Was then?

A. I suppose so, but not the Rock Island & Gulf.

Q. At the time this book was gotten out The Chicago, Rock Island & Gulf had not been incorporated?

63 A. I don't remember what that date was.

Q. But the Texas road was incorporated; it was embraced in here Chicago, Rock Island and Texas Railway Company, S. B. Hovey, Vice President and General Superintendent; M. E. Sebree, Trainmaster?

A. Yes sir.

Q. The Gulf was not embraced because it was not incorporated until subsequent; the Texas road of which you were Vice president

was part of the system at that time—at the time this book was circulated?

A. Yes we were working together.

Q. Did you make any protest when this was incorporated?

A. No sir.

Q. Didn't your office make reports to the Freight Traffic Manager of the System at Chicago? Reports of the C. R. I. & G. business?

A. There was no reports going out except to the president, except in connection with Mr.——

Q. Instead of making them to the head of the traffic department you make them direct to the president of the road, Mr. Winchell?

A. Yes.

Q. He is also president of the Pacific Company?

A. Yes sir.

Q. He is of the C. R. I. & P. and of the Gulf?

A. Yes sir, he is president; he is one of the directors of the Gulf.

Q. Your officers do furnish Mr. Winchell all of the detail data necessary to enable him to know what proportion of the Gulf road?

A. He gets a report, yes.

Q. From those reports they are able to tabulate your gross earnings and gross expenditures, know the revenues as a whole, the number of miles per car, and everything about it; is not that a fact?

A. I suppose they can.

Q. Don't you, whenever you care to do it, discharge the employés of the Pacific Co., when they come down into Texas on these three roads?

A. No sir, I never did.

Q. Never discharged one?

A. If any one came down here and broke any of the rules I would just write to the Superintendent and tell him I didn't want that man any more.

Q. What superintendent?

64 A. I am just speaking of a case, if it should happen. I have never done so. Never have discharged an employé of the Rock Island & Pacific.

Q. They turn off your men whenever they want to?

A. The same way.

Q. They turn them off, discharge them?

A. They can discharge them up there from that road, yes sir.

Q. Can discharge them from yours too?

A. No sir, I would not want anybody who broke the rules, I would not want to keep that employé.

Q. Whenever the Chicago, Rock Island & Pacific authorities discharge your men up there you don't take them back?

A. No sir, never have.

Q. You have just adopted the rules of the Chicago, Rock Island & Pacific by a sweeping order?

A. The same rules we have been working under some time. We have adopted and approved them.

Q. Is it not an actual fact that the Gulf road is operated with reference to the Pacific road just as did the Texas Company with the

Pacific road the contract between the Texas road and the Pacific was canceled?

A. No sir.

Q. Don't you actually run trains the same?

A. Yes sir, we couldn't get along without that.

Cross-examined:

Q. The operation of trains, passenger train- and through freight trains are now just as they were before the Rock Island and Texas ceased to exist?

A. Yes, just the same.

Q. Does the Pacific Company pay any part of the salary of any of the heads of departments of the Chicago, Rock Island & Gulf Company?

A. None for our general office.

Q. It pays its proportion of expense of train men who work on the road according to the number of miles run?

A. Yes sir. It pays the train men according to the number of miles run on its rails.

Q. Your company pays the expense of the men while on your rails?

A. Yes sir.

65 Redirect examination:

Q. You say the Gulf has some locomotives?

A. Yes sir.

Q. Who did you buy them from?

A. Bought them from the Pacific.

Q. Where did you get the money you refunded to the city of Dallas?

A. Out of our treasury.

Q. Didn't you get it from Chicago?

A. We got it from that depository, yes sir.

Q. Where did you have it deposited? With the Chicago, Rock Island & Pacific?

A. Yes sir.

Q. Keep your deposits with them?

A. Yes sir, six per cent interest on it.

Q. Mr. Sebree is trainmaster at Fort Worth?

A. He used to be.

Q. Who is his successor?

A. Mr. Jones.

Q. Mr. Jones has jurisdiction up to Chickasha?

A. Yes, they — part of his salary.

S. B. HOVEY testified also that the C. R. I. & P. Ry. Co. did not own all of the stock of The C. R. I. & G. Ry. Co.

S. B. HOVEY testified in reference to a letter head that was exhibited to him, which had printed on it "Rock Island System" and printed underneath that "Choctaw Oklahoma and Gulf Railroad Company," that he had no more to do with the C. O. & G. than with

the New York Central, and that the words "Rock Island System" was a kind of trade mark.

S. B. HOVEY testified in reference to Halleck's authority as Division Superintendent that south of Red River he had no more authority than the attorney questioning him, when he held the position of chief dispatcher had the same authority as any other such dispatcher for that division.

66 S. B. HOVEY testified that C. H. Kenna was car service agent of The C. R. I. & P., and that he had no jurisdiction over cars of The C. R. I. & G., and The C. R. I. & G. had a car service agent of its own. That The C. R. I. & G. ran a local freight daily from Fort Worth, one of the termini of its line, to Terral, the northern terminus and back again, which trains do not run on The C. R. I. & P. He testified about the roads mentioned as being shown on the literature offered in evidence as constituents of the Rock Island System, that is, The Chicago, Rock Island & Mexico, The Chicago, Rock Island & El Paso, The Choctaw, Oklahoma & Gulf Railroad Company, The Chicago, Rock Island and Texas and The Chicago, Rock Island & Pacific, that they were not operated as one road, but were operated separately, and that their revenues were divided just as revenues earned by The C. R. I. & G. and the T. & P. would be divided. The revenues were divided on a mileage basis. He testified that no reports were made by The C. R. I. & G. to the head of the traffic department of The C. R. I. & P.; that reports were made by The C. R. I. & G. to the President of The C. R. I. & G., Mr. Winchell, who was also the president of The C. R. I. & P.

That no representative of The C. R. I. & P. was sent or came to examine the books of The C. R. I. & G., any further than just as a representative of any other connecting line would occasionally check up business with the C. R. I. & G. That the books had never been audited from the Chicago office.

S. B. HOVEY also testified, principally on cross examination, as follows:

The contract heretofore mentioned, under which The C. R. I. & T. and The C. R. I. & P. formerly operated, was canceled by a resolution of the Board of Directors of each company in 1903, which was prior to the time The C. R. I. & G. bought the Texas road. There is now no contract between The C. R. I. & G. and The C. R. I. & P., except a traffic agreement as to the division of rates, made by the General Freight Agent of each line. This is the same character of contract that exists between The C. R. I. & G. and any other line that it interchanges business with. The C. R. I. & G. owns about fifteen or sixteen hundred freight and cattle cars, and about twenty engines, which are marked "C. R. I. & G." The C. R. I. & T. never owned either any freight cars or any engines.

67 The train dispatcher distributes cars and moves them from stations to destination as soon as they are ready to move. The train dispatcher has no power to furnish cars on The C. R. I. & G. if I instructed him not to do so.

Since I have been vice president of The C. R. I. & G. I have had

no connection whatever with the C. R. I. & P., and have had no duties to perform with any railroad other than The C. R. I. & G. I have drawn no salary from The C. R. I. & P., and had no jurisdiction whatever on it. The C. R. I. & P. pays no part of the salary of any of the general officers of The C. R. I. & G. but it pays a part of the salary of Mr. Sebree, the train master and one of the dispatchers as above stated. It pays train men who run over its line according to the number of miles of its line traversed by them. Our company pays these men while on our rails in proportion to the distance they run over it. Neither pays any part of the expense while the men are working on the other line. The traffic destined on The C. R. I. & P., the amount the Gulf road gets out of it, is the amount agreed on on division by the General Freight Agents just in the same way that the C. R. I. & G. and the T. & P. divide their revenue. Neither road pays any part of the expense of moving freight over the other line, nor pays any part of the loss sustained while in the hands of the other company by damage to freight.

Some of the men who organized the Texas road, for instance, M. A. Low and Joe Harris, were reputed to be wealthy. I have heard before of men who were worth no more than those men who secured money and constructed a line of railroad with it.

The general manager of The C. R. I. & P., Mr. Goodnow, had no jurisdiction over The C. R. I. & G. that I ever heard of. The line of road in northwest Texas, running from Texola west, now owned by the C. R. I. & G., was constructed by The Choctaw, Oklahoma and Texas Railroad Company and was purchased by an act of the legislature authorizing The C. R. I. & G. to purchase it.

The C. R. I. & G. has on deposit with The C. R. I. & P. several hundred thousand dollars, for which it received six per cent. interest per annum. When this amount is needed The C. R. I. & G. checks it out. We cannot get this amount of interest from any local bank.

Redirect examination:

In order to get a car or locomotive from that part of the
68 tracks of the Gulf Company that was formerly owned by the Texas Company to the parts of the tracks of the Gulf Company that were formerly owned by the Mexico Company and the Choctaw, Oklahoma and Texas Company, we would have to send them up through the territories over the tracks of the Pacific Company or we would have to send them over the tracks of the Fort Worth and Denver Company from Fort Worth to Amarillo and to Dalhart respectively.

A copy of the map of the system lines, as shown in the folder above referred to, is hereto appended as a part of this bill of exception and same is marked Exhibit "C" and it is agreed that same may be sent up with the record in this case for the inspection of the Supreme Court.

F. E. MITCHELL testified that he was secretary of The C. R. I & G. Railway Company; that he did not know the names of the board of directors of The C. R. I. & P. That the board of directors of The C. R. I. & G. were Mr. Hovey, Mr. Lassiter, Mr. Winchell, who was

president both of The C. R. I. & G. and The C. R. I. & P., Mr. Newby and Mr. Holloway. That there were two others whom he did not, without his books, remember. That as secretary and treasurer of The C. R. I. & G. he made no report of John Sebastian, General Passenger Agent of The C. R. I. & P. That nobody but the auditor in Fort Worth audits the books of The C. R. I. & G. and nobody comes down here to him for any information.

And there being no further evidence introduced by either the plaintiffs or the defendant in support of or against said motion, the foregoing constitutes all the testimony and evidence in the case.

Thereupon the court sustained said motion and quashed the service of citation herein on said defendant and dismissed said suit for want of jurisdiction of this court over defendant and to which action and ruling of the court in quashing said service and dismissing said suit plaintiffs then and there in open court duly excepted, for the reason that said evidence, without contradiction, conclusively shows that the defendant The Chicago, Rock Island & Pacific Ry. Co. as a foreign corporation was and is doing business in the state of Texas, and that The Chicago, Rock Island & Gulf Ry. Co. was and is the agent of said defendant company in the state of Texas and that the
69 persons whom *whom* serc*ive* of citation was made herein, as shown by the officers' returns on such process herein, and are and were the agents of said Chicago, Rock Island & Gulf Ry. Co., and that some of said persons so served with citation were the joint agents in the employ and service of both the said Chicago, Rock Island & Pacific, and the said Chicago, Rock Island & Gulf Ry. Co., and that service upon said agents as aforesaid was legal and valid service upon the defendant company and sufficient to compel said defendant to answer herein, and that the court erred in holding and ruling otherwise, and in dismissing said cause for want of jurisdiction over said defendant.

In the United States Circuit Court for the Northern District of Texas, at Fort Worth.

AUGUSTA A. PETERSON ET AL.
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

To the Honorable Supreme Court of the United States:

I, Edward R. Meek, Presiding Judge of the Circuit Court of the United States of the Northern District of Texas, sitting at Fort Worth, and at a regular term of said court, do hereby certify to your Honors for the decision of your Honorable Court, the question as to whether or not said Circuit Court under the facts disclosed by the plaintiffs' bill of exceptions herein filed acquired jurisdiction over the defendant by the service of the process as shown in said bill and as to whether or not this court erred in dismissing said cause for want of jurisdiction over said defendant. And I further certify that the judgment herein rendered is based solely on the want of jurisdiction of this court over said defendant to require it to answer and

plead herein, and that no question other than the one of jurisdiction as above set out was determined by said judgment.

70 Wherefore plaintiffs here now tender this their bill of exceptions embracing all of the foregoing matters, and as that the same be allowed by the court and filed as a part of the record herein.

STEWART & TEMPLETON,
Att'ys for Plaintiffs, Augusta A. Peterson and Ida Peterson.

We agree that the above and foregoing pages contain a true and correct statement of the proceedings on the trial of this cause, and that same may be approved as the bill of exceptions in said cause, this the 26th day of December, 1905.

N. H. LASSITER,
ROBERT HARRISON,
Att'ys for Defendant.

Examined, allowed and approved and ordered filed, this the 27th day of December, 1905.

EDWARD R. MEEK, *Judge.*

The foregoing has the following endorsement, to-wit:—
No. 320. Augusta A. Peterson *et al. vs.* The Chicago, Rock Island and Pacific Railway Company. Plaintiffs' Bill of Exceptions. Filed 27th day of Dec., 1905. J. H. Finks, Clerk By J. B. Finks, Deputy.

71 *Order to Send up Original Exhibit.*

Filed and Entered December 27th, 1905.

From the Minutes of the Circuit Court of the United States for the Northern District of Texas, at Fort Worth, November Term, 1905.

No. 320.

AUGUSTA A. PETERSON ET AL.
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

DECEMBER 27TH, 1905.

On motion of plaintiffs and of Stewart & Templeton, their attorneys of record, and upon agreement of counsel for defendant, in the above entitled cause, it is ordered that in addition to the transcript of the record on appeal in this action, the clerk of this court transmit to the Clerk of the United States Supreme Court at Washington, D. C., the following original paper filed herein to be by said clerk safely kept and returned to this court upon the final determination of this action in said Supreme Court, namely: the map shown in Exhibit "C" to the plaintiffs' bill of exceptions herein filed.

Dated the 27th day of December, 1905.

EDWARD R. MEEK, *Judge.*

From Minute book 3, page 28.

72 *Judge's Certificate.*

Filed December 27th, 1905.

In the Circuit Court of the United States for the Northern District of Texas at Fort Worth.

AUGUSTA A. PETERSON ET AL.
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

To the Honorable Supreme Court of the United States:

I, Edward R. Meek, presiding Judge of the Circuit Court of the United States for the Northern District of Texas, sitting at Fort Worth, and at a regular term of said Court, do hereby certify to your Honors for the decision of your Honorable court the question as to whether or not said Circuit Court under the facts disclosed by the plaintiffs' bill of exceptions herein filed acquired jurisdiction over the defendant by the service of the process as shown in said bill and as to whether or not this court erred in dismissing said cause for want of jurisdiction over said defendant. And I further certify that the judgment herein rendered is based solely on the want of jurisdiction of this court over said defendant to require it to appear and plead herein, and that no question other than the one of jurisdiction as set out was determined by said judgment.

December 27th, 1905.

EDWARD R. MEEK, *Judge.*

The foregoing has the following endorsement, to-wit:

No. 320. Augusta A. Peterson *et al. vs.* The C. R. I. & P. Ry. Co. Judge's certificate. Filed 27th day of Dec, 1905. J. H. Finks, Clerk, By J. B. Finks, Deputy.

73 *Petition for Writ of Error.*

Filed December 27th, 1905.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

No. 320.

AUGUSTA A. PETERSON ET AL.
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RY. CO.

To the Honorable Judges of the Circuit Court of the United States for the Northern District of Texas:

Your petitioners, Augusta A. Peterson and Ida Peterson, respectfully represent that heretofore on to-wit: the 21st day of November

1905, judgment was rendered in the above styled and numbered cause in favor of the defendant and sustaining defendant's motion to quash the service of citation had herein on the defendant, and dismissing plaintiffs' suit against said defendant and charging and adjudging the costs of said proceeding against the plaintiffs and that in rendering said judgment, as aforesaid, there are manifest errors.

Your petitioners have filed herein their assignment of error and now pray for citation to remove said proceeding and judgment to the Supreme Court of the United States at Washington, D. C. for revision and reversal, and will ever pray.

STEWART & TEMPLETON,
Att'ys for Petitioners.

Allowed: December 27th 1905.
EDWARD R. MEEK, *Judge.*

The foregoing has the following endorsement, to-wit:
No. 320. Augusta A. Peterson *et al. vs.* The Chicago, Rock Island & Pacific Railway Company. Petition for writ of error. Filed 27th day of Dec. 1905. J. H. Finks, Clerk By J. B. Finks, Deputy.

74 *Writ of Error Bond.*

Filed December 27th, 1905.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

No. 320.

AUGUSTA A. PETERSON ET AL.
vs.
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY.

Know all men by these presents: That we, Augusta A. Peterson and Ida Peterson, as principals, and John C. Harrison and W. B. Harrison, as sureties, are held and firmly bound unto The Chicago, Rock Island and Pacific Railway Company, defendant, in the above entitled cause in the sum of Five Hundred Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our heirs, executors and administrators, jointly, severally and firmly. Sealed with our seals using scroll and signed with our name*d* this 27th day of Deccember 1905.

The condition of the foregoing obligation is such, that whereas, lately at a term of the Circuit Court of the United States for the Northern District of Texas, at Fort Worth, in a suit pending in said court between Augusta A. Peterson and Ida Peterson, plaintiffs, and The Chicago, Rock Island & Pacific Railway Company, defendant, No. 320 on the docket of said court, a judgment was rendered on the 21st day of November 1905, sustaining a motion filed in said court by defendant to quash the service of citation had

therein on defendant and dismissing plaintiffs' said suit and rendering judgment therein against the plaintiffs for all cost in said proceeding. And, whereas, the said plaintiffs, the above bounden Augusta A. Peterson and Ida Peterson have obtained a writ of error and have filed a copy thereof in the office of the clerk of said court to reverse said judgment and also a citation directed to said Chicago, Rock Island & Pacific Railway Company and its attorneys of record N. H. Lassiter and Robt. Harrison, citing and admonishing them to be and appear at the United States Supreme Court to be holden in Washington, D. C. within thirty days from the 23rd day of February 1906.

75 Now if the said Augusta A. Peterson and Ida Peterson, plaintiffs, shall prosecute their writ of error to effect and pay all damages and costs of suit and pay the costs on appeal, if they shall fail to make good their plea, then the above obligation to be void otherwise to remain in full force and effect.

AUGUSTA A. PETERSON,
IDA PETERSON,
By S. W. STEWART,
Ag't and Att'y.
JNO. C. HARRISON.
W. B. HARRISON.

Approved December 27th 1905.
EDWARD R. MEEK, *Judge.*

The foregoing has the following endorsement, to-wit:—
No. 320. Augusta A. Peterson *et al. vs.* The Chicago, Rock Island & Pacific Railway Company. Writ of error bond. Filed 27th day of Dec. 1905. J. H. Finks, Clerk By J. B. Finks, Deputy.

76 *Assignments of Error.*

Filed December 27th, 1905.

In the United States Circuit Court for the Northern District of Texas, at Fort Worth.

No. 320.

AUGUSTA A. PETERSON ET AL.
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

Now comes the plaintiffs in the above and entitled cause, by their attorneys of record and say that in the record and proceedings in said case there are manifest errors to their prejudice in this:

The court erred in quashing the service of process on defendant herein and dismissing plaintiffs' said suit and taxing them with the costs thereof, and in holding that this court had no jurisdiction

over the defendant for the reason that the evidence introduced on the hearing of defendant's motion to quash service, showed conclusively that the defendant is a foreign railway corporation, doing business in the state of Texas as a common carrier of freights and passengers and that The Chicago, Rock Island & Gulf Railway Co. is the agent of said defendant company in the state of Texas and that the persons served with process herein were and are the officers and agents of said Chicago, Rock Island & Gulf Ry. Co. and of the defendant company and that some of the persons so served with process therein were in the joint service of both The Chicago, Rock Island & Pacific Railway Co. and The Chicago, Rock Island & Gulf Ry. Co. and that the service of process upon said agents as aforesaid, was legal and valid service upon the defendant The Chicago, Rock Island & Pacific Ry. Co. and was sufficient to compel it to answer in this cause. And for the errors above assigned plaintiffs pray that the judgment and order of this court quashing the service of citation on defendant, and dismissing said suit, be reversed and said cause remanded for further proceedings therein.

STEWART & TEMPLETON,
Att'ys for Pl't'ffs.

The foregoing has the following endorsement, to wit:
No. 230. Augusta A. Peterson *et al. vs.* Chicago, Rock Island & Pacific Ry. Co. Assignments of error. Filed 27 day of Dec. 1905. J. H. Finks, Clerk By J. B. Finks, Deputy.

77 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Circuit Court of the United States for the Northern District of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between Augusta A. Peterson and Ida Peterson, a minor, plaintiffs in error, and The Chicago, Rock Island & Pacific Railway Company, defendant in error a manifest error hath happened, to the great damage of the said Augusta A. Peterson and Ida Peterson, a minor, plaintiffs in error, as by their complaint appears. We being willing that error if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in -his behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., not exceeding thirty days from 23rd day of February 1906, being the date of issuance of the citation herein, in the Supreme Court of the United States to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 23rd day of February, in the year of our Lord one thousand nine hundred and six.

[The Seal of the U. S. Circuit Court, Northern Dist. Texas, Ft. Worth.]

J. H. FINKS,
Clerk of the Circuit Court of the United States for the Northern District of Texas,
By J. B. FINKS, *Deputy.*

Allowed by
EDWARD R. MEEK,
United States District Judge.

FEBR'Y 23, '06.

Service of the above writ of error is hereby fully accepted.

ROBERT HARRISON,
N. H. LASSITER,
Att'ys for the C., R. I. & P. Ry. Co.

78 [Endorsed:] No. 320. Augusta A. Peterson *et al. vs.* Chicago, Rock Island & Pacific Ry. Co. Writ of Error. Filed 23 day of Febr'y A. D. 1906. J. H. Finks Clerk. By J. B. Finks Deputy.

79 UNITED STATES OF AMERICA, *ss:*

The President of the United States to The Chicago, Rock Island & Pacific Railway Company and N. H. Lassiter and Robert Harrison, attorneys of record, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the City of Washington, within thirty days from the date of this writ, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the Northern District of Texas, wherein Augusta A. Peterson and Ida Peterson are plaintiffs in error and The Chicago, Rock Island & Pacific Railway Company is defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 23rd day of February A. D. 1906 and of the independence of the United States the 130th year.

[The Seal of the U. S. Circuit Court, Northern Dist.. Texas, Ft. Worth.]

EDWARD R. MEEK,
United States District Judge.

Service of the above citation is hereby accepted the same as if it had been fully and legally served on this day.

THE CHICAGO, ROCK ISLAND & PACIFIC RY. CO.,
By N. H. LASSITER,
ROBERT HARRISON, *Att'ys.*

Febr'y 23, 1906.

80 [Endorsed:] No. 320. Augusta A. Peterson *et al. vs.* Chicago, Rock Island & Pacific Ry. Co. Citation. Filed 23 day of Febr'y A. D. 1906. J. H. Finks, Clerk. By J. B. Finks, Deputy.

81 *Order for Transcript.*

Filed December 29th, 1905.

Be it remembered, That at a regular stated term of the Circuit Court of the United States for the Northern District of Texas, begun and holden at Fort Worth, on the — day of November A. D. 1905, and ending on the — day of ——, 1906, the Honorable Edward R. Meek, District Judge presiding, the following cause came on to be heard upon defendant's motion to quash the service of process on defendant herein, to-wit:

No. 320.

AUGUSTA A. PETERSON and IDA PETERSON
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

II.

Plaintiffs' original petition.

III.

Original summons and return thereof.

IV.

Original motion of defendant to quash service.

V.

Affidavits of Hovey, Sebree and Merrill, denying agency.

VI.

Application of plaintiff for additional service of process.

VII.

Supplemental summons and return (Thomas and Turpin).

VIII.

Supplemental motion to quash.

IX.

Affidavits of Thomas and Turpin denying agency.

X.

Order of court sustaining motion to quash service and dismissing suit.

XI.

Plaintiffs' bill of exceptions.

XII.

Order to send up map as exhibit.

XIII.

Petition for writ of error.

82 XIV.

Writ of error bond.

XV.

Assignments of error.

XVI.

Order allowing writ of error.

XVII.

Judge's certificate.

XVIII.

Writ of error.

XIX.

Citation in error.

XX.

Clerk's certificate.

The foregoing has the following endorsement, to-wit:—
No. 320 Law. Augusta A. Peterson *et al. vs.* C., R. I. & P. Ry. Co. Order for transcript. Filed 29th day of Dec. 1905. J. H. Finks, Clerk. By J. B. Finks, Deputy.

83 *Clerk's Certificate.*

I, J. H. Finks, Clerk of the Circuit Court of the United States in the Fifth Circuit and Northern District of Texas, do hereby certify that the above and foregoing is a full, true and correct transcript of the record, bill of exceptions, assignment of errors, and all proceedings in cause No. 320, wherein Augusta A. Peterson *et al.* are plaintiffs and the Chicago, Rock Island & Pacific Railway Company is defendant, except that the original writ of error and original citation in error are included therein, instead of copies thereof, as fully as the same remain on file and of record in my office at Fort Worth, Texas.

Witness my hand officially, and the seal of the Circuit Court of the United States for the Northern District of Texas, at Fort Worth, this the 27th day of February A. D. 1906, and of American Independence the 130th year.

[The Seal of the U. S. Circuit Court, Northern Dist. Texas, Ft. Worth.]

J. H. FINKS,
Clerk of said Court,
By J. B. FINKS,
Deputy.

Endorsed on cover: File No. 20,131. N. Texas. C. C. U. S. Term No. 225. Augusta A. Peterson and Ida Peterson, a minor, plaintiffs in error, *vs.* The Chicago, Rock Island & Pacific Railway Company. Filed March 16th, 1906. File No. 20,131.

FILE COPY.

Office Supreme Court, U. S.
FILED.
DEC 15 1906
JAMES H. McKENNEY,
CLERK.

BRIEF FOR PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 225.

AUGUSTA A. PETERSON AND IDA PETERSON, A MINOR, *Plaintiffs in Error*,

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *Defendant in Error.*

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

STEWART & TEMPLETON,
AND SAM J. HUNTER,
Attorneys for Plaintiffs in Error.

D. T. BOMAR,
Of Counsel for Plaintiffs in Error.

KEYSTONE PTG. CO., FORT WORTH

BRIEF FOR PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 225.

AUGUSTA A. PETERSON AND IDA PETERSON, A MINOR, *Plaintiffs in Error,*

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *Defendant in Error.*

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

STEWART & TEMPLETON,
AND SAM J. HUNTER,
Attorneys for Plaintiffs in Error.

D. T. BOMAR,
Of Counsel for Plaintiffs in Error.

STATEMENT OF THE CASE.

This is an action at law in the United States Circuit Court for the Northern District of Texas at Fort Worth, brought by plaintiffs in error, Augusta A. Peterson and Ida Peterson, a minor, suing by her mother as next friend, both of whom are citizens of Texas, against the Chicago, Rock Island & Pacific Railway Company, an Illinois corporation, as defendant. The object and purpose of the

suit is to recover the sum of thirty thousand dollars damages which the plaintiffs allege they have sustained by reason of the negligent killing of John Peterson, an employe and servant of defendant, while he was engaged in its service at Chickasha in the Indian Territory, on the 19th day of October, 1903. The said John Peterson at the time of his death was a citizen of Texas, residing at Fort Worth, and was the husband of the plaintiff, Augusta A. Peterson, and the father of the minor plaintiff, Ida Peterson. It was charged in the petition that the death of the said John Peterson was occasioned by the culpable negligence of the defendant and that plaintiffs had thereby sustained actual damages in the amount sued for. It was further charged that defendant was then engaged in carrying on its business in the State of Texas, in the name of, and through the Chicago, Rock Island & Gulf Railway Company, a Texas corporation, which it was alleged was an ancillary or subsidiary corporation of the defendant, and which was then and there being controlled and dominated, and whose lines of railway were being operated by defendant as a part of the Rock Island System of railways. The petition charged in effect that The Chicago, Rock Island & Gulf Railway Company was the agent in Texas of the defendant company and that it had been incorporated into said system and that it was under the complete domination and control of defendant. It was further charged that S. B. Hovey, the Vice-President and General Manager of the Texas Company, who resides in Tarrant County, Texas, was also the general manager and local agent in Texas of the defendant. It was also alleged that F. E. Merrill was the local agent in Tarrant County, Texas, of said defendant, and that M. E. Sebree was the local agent in said County and State for it. (Tr. pp. 1 to 5.) Service of citation was had on the defendant by serving the parties above named as its agents in Tarrant County, Texas, in the manner provided by the Statutes of the State of Texas and by the rules of the trial Court. (Tr. pp. 7 to 11.) The defendant, without answering to the merits, moved to quash the service on the ground that neither of the parties thus served was at the time of such service its agents. (Trans. p. 12.) In support of said motion, the defendant filed the ex parte affidavits of each of said alleged agents denying such agency. (Tr. pp. 12 to 14.) Thereupon the plaintiffs made an application for additional process in pursuance of a Statute of the State of Texas recently enacted. In this application, it was charged that A. L. Thomas, who resides in Tarrant County, Texas, was a train conductor engaged in handling trains over the tracks of the Chicago, Rock Island & Gulf Ry. Co., in the State of Texas, and over those of the defendant beyond the line of said State, and further that he was thus engaged in handling passenger trains over the tracks of both of said companies and across the State line between Fort Worth, Texas, and Caldwell, Kansas, and that he was an agent and representative of the defendant company residing in Tarrant County, Texas. It was further charged that V. N. Turpin, who resides in Fort Worth, Texas, was a ticket

agent engaged in selling tickets and making contracts for transportation, for and in behalf of the defendant company in the City of Fort Worth and over the line of the Chicago, Rock Island & Gulf Ry. Co. in the State of Texas, and over the lines of the defendant beyond said State line, and further that he was an agent and representative of the defendant company in said State and County. (Tr. pp. 14 and 15.) Upon this application new process was duly issued and served on the defendant by serving the parties named as the agents and representatives of defendant in said County and State. (Tr. pp. 15 and 16.) Defendant thereupon filed its supplemental motion to quash this service also, on the ground that the parties served were not, as alleged, the agents or representatives of the defendant (Tr. p. 17), and in support of such motion it filed the exparte affidavits of said parties, each denying for himself that he was an agent or representative of the defendant, but otherwise admitting the facts to be as charged. (Tr. pp. 18 and 19.) The Marshal's returns on the several citations above specified, were in the usual form and disclosed proper service on the parties therein respectively named as the defendant's agents, and such returns in each instance recited that the party thus served was the local agent in Tarrant County, Texas, of the defendant. (Tr.pp. 8, 10, 11 and 16.) In the return on the writ served on Mr. Hovey it was also recited that he was the "general manager" of defendant at Fort Worth, Tarrant County, Texas. (Tr. p. 8.) The issue thus joined upon the motion and supplemental motion to quash the service on the defendant was heard by the trial Judge who, after hearing the agreements of counsel and the evidence introduced sustained the motions and dismissed the cause at plaintiff's cost for want of jurisdiction over the defendant. To this ruling of the Court the plaintiffs duly excepted. (Tr. pp. 19 and 20.) They reserved their exception by a proper bill which was duly prepared, settled, approved and filed. (Tr. pp. 20 to 53.) The trial Judge by his certificate duly filed herein, has certified to this Honorable Court for its decision the question as to whether or not the Circuit Court, under the facts disclosed by the plaintiff's bill of exception, acquired jurisdiction over the defendant by the service of the process as shown in said bill, and as to whether or not said Court erred in dismissing said cause for want of jurisdiction over said defendant. He further certifies "that the judgment herein rendered is based solely on the want of jurisdiction of this Court over said defendant to require it to appear and plead herein, and that no question other than the one of jurisdiction as set out was determined by said judgment. (Tr. p. 54.)

FACTS DISCLOSED BY THE BILL OF EXCEPTIONS.

In addition to the facts above recited, the bill of exceptions shows the following facts, all of which were either admitted or proved, viz: It was agreed by counsel for the respective parties

as follows, to-wit: "The Chicago, Rock Island & Pacific Railway Company is a consolidated corporation, chartered under the laws of Illinois and Iowa. It has been an existing railroad corporation for over twenty years. In June of the year 1892, and for some years prior to that time, the said railway company owned and operated a line of railway from the city of Chicago in a southwesterly direction through the States of Illinois, Iowa, Missouri and Kansas to Mineo, Indian Territory. During the year 1892 this company extended its line from Mineo, Indian Territory, in a southerly direction to the north boundary line of Texas, in Montague County.

"The Chicago, Rock Island & Texas Railway Company was a corporation organized under the laws of Texas on the 15th day of July, 1902. It had an authorized capital stock of three million dollars in shares of one hundred dollars each, of which seven hundred and fifty-four shares were subscribed for at the time of its organization. Below is a list of the names of the stockholders and the number of shares of capital stock of this company subscribed for by each, at its original organization:

Name	Residence	Shares
M. A. Low	Topeka, Kansas	745
W. W. Phelps	Topeka, Kansas	1
C. F. Jilson	Topeka, Kansas	1
A. G. Hastick	Topeka, Kansas	1
W. F. Evans	Topeka, Kansas	1
C. H. Thompson	Hennessey, O. T	1
J. T. Harris	Belcher, Texas	1
H. F. Weber	Bowie, Texas	1
Z. T. Lowrie	Bowie, Texas	1
J. H. Matthews	Bowie, Texas	1
Total		754

At the time this company was organized, M. A. Low was one of the General Attorneys of the Chicago, Rock Island & Pacific Railway Company, and had been for a number of years; W. F. Evans was his Assistant and had been for a number of years; C. F. Jilson was Assistant Treasurer of said company at Topeka, Kansas, and had been for a number of years; C. H. Thompson had been employed in securing right-of-way for the same company. None of the other stockholders had ever been connected in any capacity with the Chicago, Rock Island & Pacific Railway Company.

Under the Charter of the Chicago, Rock Island & Texas Railway Company, it was authorized to construct a line of road from the north boundary line of Texas at a point in Montague County in a southerly direction through Montague, Wise and Parker Counties; the charter being afterward amended, authorized the construction into Tarrant County. This charter authorized the issuance

of first mortgage bonds amounting to fifteen thousand dollars per mile for construction and not exceeding five thousand dollars per mile for equipment.

"When the Chicago, Rock Island & Pacific Railway Company constructed its line to a point near the north bank of the Red River north of Montague County, construction work stopped for a period of time. The Chicago, Rock Island & Texas Railway Co. began the construction of its line at the north line of the State in Montague County some time after the Chicago, Rock Island & Pacific Railway Co. stopped work at a point north of Red River. After construction work began on the Chicago, Rock Island & Texas Railway Company south of Red River, the Chicago, Rock Island & Pacific Railway Company constructed its line from the point where work had stopped north of Red River to a connection with the Chicago, Rock Island & Texas Railway at the State line. The Texas Company finished the construction of its line into Fort Worth in the latter part of 1893. Some of the same contractors who constructed the Chicago, Rock Island & Pacific Railway from Minco south to Red River also took contracts for work on the Texas line.

On the 2nd day of January, 1893, after the Chicago, Rock Island & Texas Railway Company had constructed and was operating its line as far south as Bowie, Texas, it entered into an agreement with the Chicago, Rock Island & Pacific Railway Company, a true copy of which is hereto attached and marked "Exhibit A" for identification. This agreement went into effect immediately after it was executed, and was acted upon and observed by said companies until the 14th day of April, 1903, when the same was canceled under authority of the Board of Directors of each company by a written agreement, a true copy of which is hereto attached, marked "Exhibit B" for identification.

After the Chicago, Rock Island & Texas Railway Company had constructed its line, it issued first mortgage bonds to the extent of fifteen thousand dollars per mile thereon and these bonds were purchased by the Chicago, Rock Island & Pacific Railway Company, for which it paid the Texas line one hundred cents on the dollar. The Chicago, Rock Island & Texas line cost a large sum of money in excess of the amounts for which it issued bonds, which additional cost was paid by application of money subscribed by stockholders and by borrowing from the Chicago, Rock Island & Pacific Railway Company, which money so borrowed has long since been returned with interest.

At the time the Chicago, Rock Island & Pacific Railway Company constructed its line to Red River there was no town or city at that particular point but there were towns and cities south, east and west of there in the State of Texas, and a railroad line, being a part of the Missouri, Kansas & Texas Railway of Texas, nine miles south of that point.

When the Chicago, Rock Island & Texas Railway Company was first organized its general offices were located at Bowie, Montague County, Texas, and remained there for some time, until the charter was amended removing them to Fort Worth. The first general officers elected by the Chicago, Rock Island & Texas Railway Company and their residences were as follows: M. A. Low, Topeka, Kansas, President; J. C. McCabe, Bowie, Texas, General Freight Agent; and H. F. Weber, Bowie, Texas, Vice-President, Superintendent, Secretary and Treasurer. All these men prior to the time they were elected officials of the Chicago, Rock Island & Texas Railway Company had been employed in some capacity by the Chicago, Rock Island & Pacific Railway Company. In 1893 S. B. Hovey was elected Vice-President of the Texas Company and remained the Vice-President and Superintendent of the Chicago, Rock Island & Texas Railway Company from that date until it was sold out under an Act of the Legislature in 1903. Mr. M. E. Sebree, who was served with citation in this case, was for a number of years and until the date of its sale, Trainmaster of the Chicago, Rock Island & Texas Railway Company and Assistant Trainmaster of the Chicago, Rock Island & Pacific Railway Company, with jurisdiction on that line up to Chickasha, Indian Territory. Prior to the time he was employed by the Chicago, Rock Island & Texas Railway Company he had been employed by the Chicago, Rock Island & Pacific Railway Company as brakeman, conductor, etc. M. A. Low of Topeka, Kansas, remained the President of the Chicago, Rock Island & Texas Railway Company from its organization until the 8th day of November, 1900, during all of which time he was one of the General Attorneys of the Chicago, Rock Island & Pacific Railway Company. The Chicago, Rock Island & Texas Railway Company never issued or sold any equipment bonds, but before it was sold out under special act of the Legislature to the Chicago, Rock Island & Gulf Railway Company, it had purchased and was the owner of between one thousand and twelve hundred freight cars of various kinds. During the time it had no equipment of its own, it rented rolling stock from various railway companies, but principally from the Chicago, Rock Island & Pacific Railway Company, and paid therefor prices prevailing between other lines of railway in the State of Texas.

After the Chicago, Rock Island & Texas Railway Company constructed its line into Fort Worth from Bowie, and after the execution of the contract between it and the Chicago, Rock Island & Pacific Railway Company of date of January 2nd, 1893, most of the passenger and freight trains running over its line from Red River to Fort Worth and from Fort Worth to Red River were operated beyond its lines as the trains of the Chicago, Rock Island & Pacific Railway Company. The employes operating these trains were under the control of, and paid by the Chicago, Rock Island & Texas Railway Company while working on its line, and they were also under the control of and paid by the Chicago, Rock Island &

Pacific Railway Company while on its line. The equipments in the various trains went as far north as the business justified, some of the passenger equipment going as far as Chicago and some to Kansas City, while the freight equipment stopped at points beginning at Chickasha and from there north wherever the freight was destined. The passenger equipment coming south stopped at Fort Worth, and the freight equipment where the freight was handled in carload lots went to destination wherever that might be.

Whenever necessary the Texas Company would operate a local train to handle freight between Fort Worth and Red River, but as a general rule the through service maintained took care of this business. It operated a local freight and passenger train between Bridgeport and Jacksboro and afterwards to Graham from the time this branch was built until it was sold out, which was several years. On the through freight trains the run made by the crews was from Fort Worth to Chickasha, and on the through passenger trains the run made by the crews was from Fort Worth to Caldwell, Kansas, these crews being handled and paid as above set forth. Outside the Pullman cars, which were in each passenger train, nearly all the passenger equipment used by the Chicago, Rock Island & Texas Railway Company belonged to the Chicago, Rock Island & Pacific Railway Company, for which it paid rental as provided for under the terms of the contract herein first referred to.

Defendant's witnesses will testify that the Texas Company paid no part of the cost of operating the Chicago, Rock Island & Pacific Railway, nor did the Pacific Company pay any part of the cost of the operation of the Chicago, Rock Island & Texas Railway, nor did either of them participate in the earnings of the other The relationship between the companies is fully disclosed by the terms of the contract dated January 2nd, 1893, which was observed up to the time of its cancellation.

The passenger conductors, brakemen, and train guards wear regular train uniforms and on the lapel of the coat are the words "Rock Island" and on the cap is the word "Conductor," "Brakeman," or "Porter." Any member of these train crews, while working on the line of the Texas Company may be discharged by the proper officer of that company; and while working on the line of the Pacific Company may be discharged by the proper officer of that company. Either company of course employs additional men when needed.

At the time the contract of January 2nd, 1893, was canceled the Chicago, Rock Island & Texas Company was operating about a hundred and forty miles of road, and the Chicago, Rock Island & Pacific Company was operating about three thousand three hundred miles. For a considerable time after the Chicago, Rock Island & Texas Railway Company was built into Fort Worth it employed and maintained at its Fort Worth office a train dispatcher who gave orders for the movement of trains over its line, but as a matter of economy this was abolished, and the Texas Company paid a part of

the salary of the train dispatcher located at Chickasha to give orders for the movement of trains over its rails.

On the 22nd day of September, 1903, the Chicago, Rock Island & Texas Railway Company, under authority of a special act of the Legislature known as Senate Bill No. 161, was purchased and absorbed by the Chicago, Rock Island & Gulf Railway Company, and since that time has ceased to exist as a railroad or to do any business as such.

At the time the Gulf Company purchased the Texas Company it had constructed and was operating a line of road from Fort Worth, in Tarrant County, to Dallas, in Dallas County. The Chicago, Rock Island & Gulf Railway Company now owns and operates three hundred and eighty-six miles of road, all of which is located inside of the State of Texas. It does not own any railroad outside the State of Texas. It owns at the present time about sixteen hundred cars, including ballast, refrigerator and cattle cars, twenty locomotives and eight cabooses, but does not own any passenger equipment other than the Pullman cars which are used in each of its passenger trains, it rents its passenger equipment from the Chicago, Rock Island & Pacific Railway Company and pays therefor current rental charges by connecting lines in Texas. The train crews on both the through passenger and freight trains are handled in the same way that they were when the line into Fort Worth was operated by the Chicago, Rock Island & Texas Railway Company, but the Chicago, Rock Island & Gulf Company is now operating in many places local trains between local points in Texas.

The following is a list of stockholders and the amount of stock of the Chicago, Rock Island & Gulf Railway Company owned by each:

Wm. Wesley Johnson	3850
S. B. Hovey	1
N. H. Lassiter	1
J. C. McCabe	1
W. G. Newby	1
H. C. Holloway	1
J. B. Wilson	1
W. B. Leeds	1
B. L. Winchell	1
Robert Mather	1
H. B. Low	1
Total	3860

Mr. Wm. Wesley Johnson is a resident of New York, N. Y.; Messrs. S. B. Hovey, N. H. Lassiter, J. C. McCabe, W. G. Newby and H. C. Holloway are residents of Fort Worth, Texas; Mr. J. B. Wilson is a resident of Dallas, Texas; Messrs. W. B. Leeds, B. L. Winchell, and Robert Mather, are residents of

Chicago, Illinois; Mr. H. B. Low is a resident of El Reno, Oklahoma.

The Chicago, Rock Island & Gulf Railway Company is operating under a lease that part of the line of the Chicago, Rock Island & Pacific Railway Company which begins at the north boundary line of the State of Texas, extending northward to the town of Terral, Indian Territory, a distance of about 1¼ miles.

Blank passes properly signed by different railroads, including the Chicago, Rock Island & Pacific, Texas & Pacific, Houston & Texas Central and other lines, are sometimes placed with S. B. Hovey, and when so placed he has the permission of such line to fill in the names of parties, and countersigned, such pass is recognized by the line over which it is issued. The local ticket agents of the Chicago, Rock Island & Gulf Railway Company sell coupon tickets over the Chicago, Rock Island & Pacific Railway Company's line and nearly all other lines in the United States, which tickets are duly honored by the respective roads over which they read. The Chicago, Rock Island & Gulf Railway Company operates only one passenger train each way daily between Fort Worth and Dallas, while it operates two trains each way from Fort Worth north. It operates also only a local freight service between Fort Worth and Dallas, but no through freight service. Proper officials of the Chicago, Rock Island & Gulf Railway Company and of the Chicago, Rock Island & Pacific Railway Company exchange reports with each other as to the amount of exchange business done.

No dividends were ever paid on the stock of the Chicago, Rock Island & Texas Railway Company and none have been paid on that of the Chicago, Rock Island & Gulf Railway Company; the net earnings of the Chicago, Rock Island & Texas Railway Company were put into betterments and improvements and the same is the case with the Chicago, Rock Island & Gulf.

In 1897, L. G. Hastings, then Secretary of the Chicago, Rock Island & Texas Railway Company, reported to the Interstate Commerce Commission that the Chicago, Rock Island & Texas Railway Company was controlled by the Chicago, Rock Island & Pacific Railway Company through the ownership of a majority of its bonds. In 1899 he reported it as controlled by the Pacific Company through its ownership of a majority of its capital stock.

On the 2nd day of August, 1904, M. E. Sebree, who resides in Fort Worth, Texas, was trainmaster of the Chicago, Rock Island & Gulf Rilway Company, and was also assistant trainmaster of the Chicago, Rock Island & Pacific Railway Company between the north line of Texas and Chickasha, Indian Territory. He is paid by the Gulf Company for the work he does for it and by the Pacific Company for the work he does for it. S. B. Hovey is Vice-President and Superintendent of the Chicago, Rock Island & Gulf Railway Company and will testify that he is not connected with, nor does he perform any service for any other railroad.

After making certain changes and additions, the Chicago, Rock Island & Gulf Railway Company adopted the book of rules issued

by the Chicago, Rock Island & Pacific Railway Company for the control of the operation of its line, and such rules are now in force. The cars and engines belonging to the Chicago, Rock Island & Gulf Railway Company when in need of repairs, have the work done at its shops in Fort Worth and Dalhart, if the cars and engines are convenient to these two pints, otherwise the work is done at some other convenient place either on or off the line of the Chicago, Rock Island & Pacific Railway Company wherever the cars or engines may be at the time the repairs are needed.

On the 2nd day of August, 1904, the Chicago, Rock Island & Gulf Railway Company had a different president and altogether different officers from any of the lines above listed as included in the Rock Island System. The Chicago, Rock Island & Gulf Railway Company does not now and never has paid any part of the salary of any officer of the Chicago, Rock Island & Pacific Railway Company, or of any of the lines named as constituting the Rock Island System.

Before the Chicago, Rock Island & Gulf Railway Company purchased the Chicago, Rock Island & Texas Railway Company, the Chicago, Rock Island & Mexico Railway Company and the Choctaw, Oklahoma & Texas Railway Company, M. E. Sebree was trainmaster of the Chicago, Rock Island & Texas Railway Company and division trainmaster of the Chicago, Rock Island & Pacific Railway Company, with jurisdiction to Chickasha, Indian Territory. Since the purchase by the Gulf Company of the above named Texas lines Mr. Sebree's jurisdiction extends over what were the Chicago, Rock Island & Mexico Railway Company and the Choctaw, Oklahoma & Texas Railroad Company, otherwise there has been no change in his employment or jurisdiction for the past five to ten years.

The Chicago, Rock Island & Gulf Railway Company pays a portion of the salary of a joint train dispatcher located at Chickasha, Indian Territory, under the same character of arrangement which existed between the Chicago, Rock Island & Texas Railway Company and the Chicago, Rock Island & Pacific Railway Company. This train dispatcher in giving orders for the handling of trains on the Chicago, Rock Island & Gulf Railway Company is subject to the control, direction and supervision of the executive officers of the Chicago, Rock Island & Gulf Railway Company as if exclusively employed by it.

The rails of the Chicago, Rock Island & Gulf Railway Company on the line running from Fort Worth north connects at the State line with rails of the Chicago, Rock Island & Pacific Railway Company. The point of connection is somewhere near the middle of Red River on a bridge. At this particular point there is no town, station, or turnout and the trains going in either direction do not stop at said point. It was not possible to build a town or station at the exact point of connection.

"It is further agreed that A. L. Thomas, upon whom process has been served herein as conductor and agent of defendant, was at the date of said service and is now and has been for many years a conductor running on and handling passenger trains for the defendant, the Chicago, Rock Island & Pacific Ry. Co., the Chicago, Rock Island & Texas Ry. Co., and later on the Chicago, Rock Island & Gulf Ry. Co., after its purchase of the Texas Company, running and handling such trains between Fort Worth, Texas, and Caldwell, Kansas. That the run of said Thomas is now and has been from Fort Worth, Texas, to Caldwell, Kansas, as aforesaid, on both sides of the State line, and that Caldwell, Kansas, is the end of the first passenger division on said line north of Fort Worth; and it is further agreed that V. N. Turpin, upon whom process was served herein as the ticket agent of the defendant company, was at the date of the service of said process and has been for a long time ticket agent of the Chicago, Rock Island & Gulf Ry. Co., at Fort Worth, engaged in selling tickets for the said Chicago, Rock Island & Gulf Ry. Co., over its lines and also over the lines of the Chicago, Rock Island & Pacific Ry. Co., and all of its connections.

It is further agreed that the facts are that "Thomas is carried on the Pacific Company's pay roll and paid for services rendered while on that company's line north of the Texas State line; and is carried on the Gulf Company's pay roll and paid by the Gulf Co. for services rendered on its line south of the Texas State line; and that Turpin is carried on the Gulf Co's. pay roll alone, and is not carried on the Pacific Co's. pay roll and is not an agent of the Pacific Co.. unless the above stated facts make him one." (Tr. pp. 22 to 30.)

Appended to this agreement are the following exhibits, viz:

EXHIBIT "A."

"Articles of Agreement made and entered into this 2nd day of January, 1893, by and between the Chicago, Rock Island & Pacific Railway Company, a corporation organized and existing under the laws of the States of Illinois and Iowa, hereinafter called the Rock Island Company, party of the first part, and the Chicago, Rock Island & Texas Railway Company, a corporation organized and existing under the laws of the State of Texas, hereinafter called the Texas Company, party of the second part, witnesseth:

I.

Said Rock Island Company owns and operates among other lines of railway extending from the City of Chicago in the State of Illinois to a point on the south line of the Chickasaw Nation in the Indian Territory, where it connects with the railway of the Texas Company.

II.

The Texas Company owns and operates a railway from the point of conection with the railway of said Rock Island Company on the line between the State of Texas and the Indian Territory, extending thence in a southerly direction through the County of Montague to the city of Bowie, Texas, and is engaged in the construction of its railway between said city of Bowie and the city of Weatherford, in the County of Parker, State of Texas, and proposes to construct branches therefrom and extensions thereof, and desires to raise money to be applied thereto by the sale of its first mortgage bonds. It also desires to make a permanent arrangement with the Rock Island Company for the exchange of traffic.

Therefore, in consideration of the premises and of the several covenants, promises and agreements, hereinafter set forth, the parties do covenant, promise and agree with each other as follows:

ARTICLE I.

For the purpose of avoiding unnecessary repetition, as well as misapprehension, in the construction and performance of the covenants and agreements hereinafter set out, it is agreed:

Section 1. The word "traffic" when used in these articles shall be taken as equivalent of the phrase, "passengers and property received for transportation." The phrase "through traffic" shall be taken as the equivalent of "traffic" which can be transported with reasonable directness from the point of shipment to the point of destination, over a line composed in whole or in part, of portions of the railways of each of the parties hereto; and "local traffic" as the equivalent of "traffic which can be transported on the most direct line from the point at which it will originate to the point to which it shall be destined, wholly over the railway of one of the parties hereto;" the phrase "through line" as the equivalent of "a line composed in whole or in part of some portion of two or more railways over which through traffic, as above defined, can be transported;" the "point at which traffic originates" and "originating point" as the equivalent of "the place at which traffic is delivered by the owner or consignor to a common carrier for carriage over a through line;" "the point of destination" as "the point at which such traffic shall be delivered to the consignee."

Section 2. It is declared to be the purpose of the parties hereto by the execution of these articles and the performance of the several covenants, promises and agreements herein set out, to establish and operate through lines of railway, which shall connect when the same can be done with reasonable directness, all points on the lines of both of the parties hereto, treating all railroads with which either party shall have any traffic or running arrangements or in which it shall have any leasehold interest as a part of the line of the party hereto, with which it is

so related, and to secure the operation of all said lines as to through traffic, as they should be operated if all were owned by one corporation. Provided, however, that nothing herein shall be so construed as to confer upon any railway company which may have a railroad connecting with the line of either of the parties hereto any rights or privileges otherwise than upon and during the election and direction of the parties hereto, or as a successor or assignee of one of the parties hereto.

ARTICLE II.

The Rock Island Company covenants, promises and agrees with the Texas Company:

Section 1. That it will purchase of the Texas Company its bonds when they shall be offered to it by said Texas Company, to an amount not exceeding fifteen thousand dollars per mile for railway which shall have been actually constructed by said Texas Company. It will also purchase from said Texas Company all first mortgage bonds which shall be issued by it and secured by said first mortgage, payable on the 1st day of January, A. D. 1933, with interest at the rate of six per centum per annum, for the equipment of said railroad to an amount of par value equal to five thousand dollars per mile for railway actually constructed, not exceeding, however, in such par value the actual amount expended in the purchase of such rolling stock. It will pay for all bonds purchased of the Texas Company the par value thereof, in cash at the time of the delivery of the bonds.

Section 2. That it will, so far as it lawfully can, deliver to the railway of the Texas Company all west-bound traffic which may be received by it for transportation, to any point which can be reached with reasonable directness by through lines composed in whole or in part of some portions of the railways of the parties hereto, and that it will make all lawful and reasonable efforts to secure the transportation of all such through traffic which may be received by it over such through lines.

Section 3. It will furnish freight cars for the transportation of through traffic as nearly as shall be practicable in the proportion of its mileage to the entire mileage over which such traffic shall be moved between the points where it shall be received on the railways of the parties hereto and the points of destination or delivery to connecting carrier.

Section 4. It will receive from the Texas Company all through traffic which said Texas Company shall deliver to it in the performance of its covenants, promises and agreements herein contained; and that it will transport the same to destination when such destination is upon any of its railways, or to the proper connecting carrier, when such destination is beyond its own line.

ARTICLE III.

The Texas Company covenants, promises and agrees with the Rock Island Company as follows:

Section 1. That it will, so far as it lawfully can, deliver to the railway of the Rock Island Company, at the most accessible or convenient points, all east-bound through traffic which may be received by it for transportation to any point which can be reached with reasonable directness by a through line which is composed in whole or in part of a portion of the railways of the parties hereto; and that it will make all lawful and reasonable efforts to secure the transportation of all such through traffic which may be received by it over such through lines.

Section 2. That it will receive from the Rock Island Company at the point of junction, such west-bound through traffic as shall be offered to it by said Rock Island Company, at such points, and will safely and promptly transport and deliver the same to destination if upon its own railway, or to connecting common carrier when the point of destination is beyond its own line.

Section 3. It will furnish freight cars for transportation of through traffic, as nearly as shall be practicable, in the proportion of its mileage to the entire mileage over which such traffic shall be moved between the point at which it shall be received on the railway of the parties hereto and the point of destination or delivery to a connecting carrier.

ARTICLE IV.

The parties hereto mutually covenant, promise and agree:

Section 1. Each will construct and maintain its railways and appurtenances thereto belonging, in such condition as will enable it to promptly and safely transport and deliver all through traffic which may be delivered to it for transportation over any through line hereby established.

Section 2. All traffic which shall be received on the railway of either party hereto shall be transported over the most direct line from the points at which it shall be received to the points to which it shall be destined, or be delivered to a connecting carrier not a party herein.

Section 3. All through traffic received for transportation over any through line hereby established shall be way-billed from the point at which it shall be received on any railway of either party hereto to the point of destination, if upon any such railway, or to the point at which it shall be delivered to a connecting line.

Section 4. Each party shall control the movement of traffic on its own railways, and defray all expenses which may be incurred in moving and handling the same while under its control.

Section 5. Time schedules for running through passenger, freight and express trains shall always be made and agreed upon by the parties and shall be so made as to connect from the line of one railway to the line of the connecting railway without delay or hindrance; but it is distinctly understood that in making such schedules, the convenience of all parties shall be regarded, and that the through trains shall not be so arranged as to connect with any train operated by either one of the parties on its own railway to the serious prejudice of the other party except upon just compensation to the parties so prejudiced. If the parties shall not be able to agree upon the establishment, modification, alteration or abrogation of any schedule, either may require that the matter in dispute shall be determined by reference, as hereinafter provided.

Section 6. The rates on all east-bound through traffic which shall pass over any through line hereby established, shall be fixed from time to time by the Texas Company and the rates on west-bound through traffic shall be fixed by the Rock Island Company. If either party shall at any time feel aggrieved by any rate fixed by the other, it may make such grievances the basis of a complaint, which shall be determined by reference as hereinafter provided.

Section 7. All through rates shall be prorated between the parties hereto upon the basis of the mileage over which such traffic shall be transported, counting every mile of the railroad of the Texas Company as one and one-half miles and every mile of the railroad of the Rock Island Company as one mile.

Provided, that either party hereto may, at the end of each period of five years, demand a readjustment of the division of through rates and in case the parties hereto cannot agree upon such readjustment of such division, it shall be determined by reference, as hereinafter provided.

Section 8. Full and accurate accounts shall be kept by each party showing the kind and amount of through traffic which has passed over its railway, the places where it was received and those where it was delivered to the consignee or to a line connecting with the through lines hereby established with the amount received for transporting the same. A statement of its own account from the first to the last days of each month, both inclusive, shall be delivered by each party to the other, within twenty days immediately succeeding the last day of the month covered by such statement. Each company shall have the right by its attorney or agent to examine at any time during business hours, on business days the books, accounts and papers of the other party hereto, relating to the through business received and transported and shall also have the right to take transcripts of such books, accounts and papers. When statements are not disputed they shall be adjusted and balances paid within five days after the exchange of statements is completed. Balance due on account of through traffic shall be promptly paid without regard to other accounts which may be pending between the parties.

The Texas Company will also keep a full, true and accurate account of its receipts from all sources, and its disbursements for all purposes; and exhibit the same upon demand to the Rock Island Company or its duly authorized agent.

Section 9. Each of the parties will furnish its quota of cars for the transportation of through traffic so that the mileage shall be equalized as nearly as shall be practicable, and if any party shall furnish cars in excess of its proportion it shall be entitled to compensation for such excess at the rates usually allowed for car service. The Rock Island Company will, on request of the Texas Company, furnish all such mail, passenger and baggage cars as may be needed in transporting mails, baggage, and passengers over the railway of the Texas Company, together with such engines and other equipment as may be necessary to the operation of said Texas Company, and shall receive for the use of the same the compensation usually allowed at the time in the State of Texas for such use.

Section 10. Liability for damage to persons or property in transit over the through lines hereby established shall be borne and paid by the party upon whose railway the damage shall occur. When the location of the cause of the injury is concealed or unknown the damage sustained shall be borne and paid by the parties who share in the through rates charged for the transportation thereof, in the proportion in which such rates shall be divided.

Section 11. Cars of one of the parties hereto received on the line of the other, shall be promptly returned to the other, preference always being given to loaded cars. All carload freight shall be sent over the lines of the parties hereto without transfer, when the cars in which traffic is loaded are in good condition.

Section 12. The parties will join in operating through trains for the transportation of through traffic, and each will furnish power to move the same over its own tracks.

Section 13. If any difference shall arise as to the construction of these articles or in reference to the performance of any covenant, promise or agreement herein contained, either party may demand a decision of the same by referees. The party demanding the reference shall serve upon the other party a written notice of such demand, and the name of one disinterested person chosen by the demandant as referee. The party so notified shall, within ten days after receiving such notice, select a disinterested person to act as referee. If the party duly notified shall neglect or refuse to select a referee, within ten days after receiving such notice, the referee chosen shall select an additional referee. The referee thus chosen shall fix a time and place for the hearing and shall give the parties reasonable notice thereof. At the time and place named they shall proceed with the hearing, unless it shall be continued for cause shown. If the referee thus chosen shall unanimously agree upon an award or decision, and reduce the same to writing, it shall be binding and conclusive upon the parties. If they cannot agree, they shall make a statement of the facts which are not disputed and

then select a disinterested person as the third referee. To the board thus constituted shall be submitted the agreed statement of facts and such evidence as the parties may produce, concerning the disputed matters, reasonable opportunity to be heard to be given to each of the parties. The award or decision of the majority of the board thus constituted when reduced to writing and served upon all the parties, shall be binding and conclusive upon each.

Section 14. No differences which may arise, as to the construction or performance of any of the covenants, promises or agreements herein contained shall affect, while it remains undetermined, the manner of transacting business pursuant to these articles; but it shall be transacted and settlements and payments made as before the existence of such difference; and when it is finally determined by reference as above provided, or otherwise, payments and restitution shall be made by the respective parties, as may be required by the award of the referees or provided in the agreement of adjustment, as the case may be.

Section 15. If for any reason any of the covenants, promises or agreements in any of these articles expressed shall be adjudged void, such adjudication shall not affect the validity or obligation of any other covenant, promise or agreement which is in itself valid. A controversy as to the validity or construction of any covenant, promise or agreement shall not delay the performance of any other. In the event of the failure in law of any of the covenants, promises or agreements herein contained, steps shall be taken, and such contracts shall be made as shall be advised by counsel to carry into effect the purposes and intent of this agreement.

Section 16. This contract shall be obligatory on the parties for a term of nine hundred and ninety-nine years from the 1st day of January, A. D. 1893; and the Rock Island Company is expressly authorized to assign and transfer its interest in the same by mortgage or other conveyance of its railway and its railway property.

In Witness Whereof, the Chicago, Rock Island & Pacific Railway Company and the Chicago, Rock Island & Texas Railway Company have caused their corporate seals to be impressed hereon, and the signatures of their presidents and secretaries to be hereto affixed, the day and year first above written.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

(Signed) By R. R. Cable, President.

Attest: (Signed) W. G. Purdy, Secretary. (Seal.)

THE CHICAGO, ROCK ISLAND & TEXAS RAILWAY COMPANY.

(Signed) By M. A. Low, President.

Attest: (Signed) Harry F. Weber, Secretary. (Seal.)

(Tr. pp. 30 to 36.)

EXHIBIT "B."

The State of Texas, County of Tarrant:

Know all Men by These Presents: Whereas, heretofore on to-wit, the 2nd day of January, A. D. 1893, a traffic contract was entered into by and between the Chicago, Rock Island & Pacific Railway Company, a foreign corporation, signing by its president, R. R. Cable, and the Chicago, Rock Island & Texas Railway Company, a Texas railroad corporation, signing by its president, M. A. Low; and

Whereas, the Board of Directors of each of said companies have authorized and directed the annullment and cancellation of said contract,

Now Therefore, the said railway companies hereby mutually agree in consideration of the benefits that will accrue to each on account of the annullment and cancellation of said contract, that the same be and it is hereby canceled and annulled, and each party thereto is hereby fully released and relieved from each and every provision and obligation therein contained.

This contract is executed in duplicate.

In Testimony Whereof, witness the signature of each of the parties hereto, by its proper officer, attested by its secretary on this the 14th day of April, A. D. 1903.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

By.....

Attest: .....Secretary.

CHICAGO, ROCK ISLAND & TEXAS RAILWAY COMPANY.

By.....

Attest: .....Secretary.

(Tr. pp. 36 to 37.)

The plaintiffs introduced in evidence the Twenty-fourth Annual Report of the Chicago, Rock Island & Pacific Ry. Co., defendant herein, for the year ending June 30th, 1904, to its stockholders and in which the following, among other things, appear as a part of said report:

"To the Stockholders of the Chicago, Rock Island & Pacific Railway Co.:

The Board of Directors submit their report of the operations and affairs of the Chicago, Rock Island & Pacific Ry. Co. for the fiscal year ending June 30th, 1904. They have included therein, operations and affairs of the operated lines and auxiliary companies forming the "Rock Island System."

In order to make exhibits comparative the figures for the last preceding year have been restated to meet changed conditions due to the including in this report the operation of the auxiliary companies.

These lines thus forming the Rock Island System are the following:

MILEAGE OPERATED.

The Chicago, Rock Island & Pacific Ry	6,760.74
The Chicago, Rock Island & El Paso Railway	111.50
The Chicago, Rock Island & Gulf Railway	386.92

On page 9 of said report, under the head of "Property" and "Franchises," occur the following:

During the year expenditures were made: For construction of extensions and completion of System lines as follows:

Fort Worth, Texas, to Dallas, Texas	$111,371.55
Yarnall, Texas, to Amarillo, Texas	108,615.64
Jacksboro, Texas, to Graham, Texas	32,138.96
Red River to Fort Worth, Texas	28,013.04
Texhoma (Texas State line) to Bravo, Texas	9,646.03
Texola (Texas State line) to Yarnall, Texas	2,328.30

In addition to the expenditures during the year as above, there has been transferred to property account sundry amounts expended prior to July 1st, 1903, for construction of new lines and shops, and purchase of equipment which have been heretofore stated in the system assets as "Advances for Construction and Equipment," the property represented by such amounts having been deeded to the Chicago, Rock Island & Pacific Railway Co. or the Chicago, Rock Island & Gulf Railway Co., $23,169.83.

There has also been transferred to this account the expenditures made prior to July 1st, 1903, for the purchase of shares of capital stock of the Burlington, Cedar Rapids & Northern Railway Company and the Rock Island & Peoria Railway Company, also cost of the stock of the Choctaw, Oklahoma & Gulf Railroad Company in excess of its par value and the value of bonds of the Chicago, Rock Island & Texas Railway Company, owned by the Chicago, Rock Island & Pacific Railway Company, the value of said property appearing upon balance sheets shown in prior year's report as "Stocks and Bonds of Constituent Companies," $16,446,009.73.

On page 11 of said report, under the heading "New Lines Open for Operation," the following statements are made, viz:

Additions have been made to the operated system—mileage since the last report as follows:

By the Chicago, Rock Island & Gulf Railway Company, Fort Worth, Texas, to Dallas, Texas, 33.26 miles, opened for operation in December, 1903.

Yarnall, Texas, to end of track west of Amarillo, Texas, 18.40 miles, opened for operation in November, 1903.

Corrections in measurements, Red River to Fort Worth, Texas, .83 miles.

Operated system mileage was decreased 18.22 miles between Yarnall, Texas, and Amarillo, Texas.

Fort Worth, Texas, to Dallas, Texas.—This line was completed and the line opened for operation by the Chicago, Rock Island & Gulf Ry. Co. December 1st, 1903. It is 33.26 miles in length, connecting with the line of the former the Chicago, Rock Island & Texas Ry. Co. at Fort Worth, and extending to Dallas, where, by an agreement with the Gulf, Colorado & Santa Fe Railway Co., it has the joint use of the latter company's terminal facilities.

The opening of this line gives the Gulf Company direct entrance into Dallas, enabling it to compete for the traffic of that important commercial center.

On page 12 of said report is the following statement, viz:

SYSTEM MILEAGE UNDER CONSTRUCTION.

By the Chicago, Rock Island & Gulf Ry. Co.:

Amarillo, Texas, to Texas-New Mexico Boundary.....69.87

Amarillo, Texas, to Tucumcari, N. M. The grading for a considerable portion of this line has been done from Amarillo westward.

It was deemed advisable, however, to suspend active construction until such time as the business outlook would warrant the expenditure necessary to complete.

CONSOLIDATION OF TEXAS LINES.

The Legislature of the State of Texas, by an act passed March 27th, 1903, authorized the sale of the railroads and properties of the Chicago, Rock Island & Texas Railway Company, extending from the Red River to Fort Worth, Texas, with a branch from Bridgeport, Texas, to Graham, Texas. The Chicago, Rock Island & Mexico Railway Company extending from the Texas-Oklahoma line near Texhoma to the Texas-New Mexico line at Bravo; and the Choctaw, Oklahoma & Texas Railroad Company, extending from the Texas-Oklahoma line near Texola, Texas, to Amarillo, Texas, to the Chicago, Rock Island & Gulf Railway Company which had constructed a line of railroad from Dallas, Texas, to Fort Worth, Texas, where it connected with the line first named above.

In accordance with the authority granted, the properties referred to were, by appropriate corporate action, deeded to the Chicago, Rock Island & Gulf Railway Company on December 1, 1903.

This consolidation permits the properties in question to be operated by one management instead of four separate sets of officials, as heretofore, resulting in economy of operation and greater efficiency in service.

In stating the assets and liabilities of the companies forming the System, the holdings of the Chicago, Rock Island & Pacific Railway Company in the bonds and capital stock of auxiliary lines, together with loans between system companies, have been eliminated from the liabilities and a like reduction made in the value of the assets; the figures as stated, therefore represent the value of the assets and the real liability without duplication.

By Order of the Board of Directors.

R. L. WINCHELL, President."

The genuineness of this report was conceded. (Tr. pp. 37 to 39.)

Plaintiffs also introduced in evidence the Second Annual Report of the Board of Directors of the Rock Island Company, to its stockholders for the year ending June 30th, 1904, and in which the following statements appeared, viz:

"To the Stockholders of the Rock Island Company:

The Board of Directors herewith submit their report of the Rock Island Company for the fiscal year ended June 30, 1904, together with data and information concerning the affairs of the companies in which your company is interested through ownership of stock.

The Rock Island Company is the owner of the entire capital stock, except directors' shares, of the Chicago, Rock Island & Pacific Railroad Company, a corporation of the State of Iowa.

The Chicago, Rock Island & Pacific Railroad Company owns 695,574.75 shares of the capital stock of the Chicago, Rock Island & Pacific Railway Company, a corporation of the States of Illinois and Iowa, and 286,349 shares of the common capital stock of the St. Louis & San Francisco Railroad Company, a corporation of the State of Missouri.

Each of the two latter companies operates independently its lines of railway and each is interested through the ownership, directly or indirectly, of at least the majority of the capital stock, in certain subsidiary companies, each of which operates its property independently. The lines of the Chicago, Rock Island & Pacific Ry. Co., including lines formerly of the Choctaw, Oklahoma & Gulf Railroad Company, the Burlington, Cedar Rapids & Northern Ry. Co., and the Rock Island & Peoria Ry. Co., together with the lines of its subsidiary companies, namely, the Chicago, Rock Island &

Gulf Ry. Co. and the Chicago, Rock Island & El Paso Ry. Co. comprise what is known as the "Rock Island System."

As the Rock Island Company is the owner of the entire capital stock, except directors' shares, of the Chicago, Rock Island & Pacific Railroad Company, the income of both the companies is included in the following statement:

This report was made by order of the Board of Directors, was dated October 17th, 1904, and was signed by Robt. Mather, President. Appended to this report as a part of it under the head of "Statements and Exhibits, Rock Island System Lines," was the following statement, to-wit:

On page 23 of said report, under the heading of "Rock Island System—State of Mileage Operated:"

The Chicago, Rock Island & Gulf Ry. Co.:

Terral, I. T. (Red River), to Dallas, Texas	126.67
Bridgeport, Texas, to Graham, Texas	53.29
Texhomo, O. T., to Bravo, Texas-New Mexico State Line	91.75
Texola, O. T. (Texas State line), to Amarillo, Texas	112.97
Total Chicago, Rock Island & Gulf Ry. Co.	386.68

Plaintiffs also introduced in evidence a railroad folder of date July 10th, 1904, on the back of which was printed in large white letters on a dark background:

"ROCK ISLAND SYSTEM"

"Time Table."

And in which appeared the names of the Chicago, Rock Island & Pacific Ry. Co., the Chicago, Rock Island & El Paso Ry. Co., and the Chicago, Rock Island & Gulf Ry. Co., together with a list of the names and residences of the Passenger, Freight and Traveling Agents of said roads, respectively, and showing also a schedule of passenger train service on all of said lines.

On the inside cover of said folder is a map on which is traced or printed in heavy solid black, the lines of the Chicago, Rock Island & Pacific Ry. Co., the Chicago, Rock Island & El Paso Ry. Co., and the Chicago, Rock Island & Gulf Ry. Co., so connected as to show them all belonging to the same system. Said lines all being the same in size and color, and below which said map on said page is printed the following:

"THE ROCK ISLAND STATES OF AMERICA."

"The Rock Island System covers a territory which is 1,000 miles long by 1,000 miles wide, supports a population of more than 21,000,000 people and is capable of supporting at least four times

that many. The area of this territory is as great as the combined area of France, Germany, Italy, Spain, Austria-Hungary, Denmark, The Netherlands, Turkey, Switzerland and Greece, and its productive capacity is greater.

"Here are produced more than half the wheat, more than half the corn and nearly half the cotton, silver and gold produced in the United States."

This is the folder referred to by Mr. Hovey in his testimony.

The annual report of the C. R. I. & P. Ry. Co., above mentioned, shows that the Board of Directors of said company consists of thirteen members, while the executive committee of said company consists of eight members. The report of the Rock Island Company, above mentioned, shows that the Board of Directors of said company consists of sixteen members while its Finance Committee consists of six members. Eleven members of the Board of Directors of the Railway Company are also members of the Board of Directors of the Rock Island Company. Five members of the Executive Committee of the Railway Company are also members of the Finance Committee of the Rock Island Company. All the officers of the Rock Island Company, as given in said report of said company were, with two exceptions, shown to be also officers of the Railway Company as disclosed by the report of said company.

These reports show that a majority of the officers and directors of each of said companies are common to both of them. (Tr. pp. 39 to 41.)

The plaintiffs introduced S. B. Hovey, who testified to substantially the following facts, viz: At the time of the service of the citation on him he was, and yet is, the Vice-President and Superintendent of the Chicago, Rock Island & Gulf Railway Company, residing in Fort Worth, Tarrant County, Texas. He has held this position with said company ever since its organization and ever since it absorbed the Chicago, Rock Island & Texas Railway Company on the 22nd day of September, 1903. Prior to that time he had held the same position with the last named company since 1893. Prior to this time he had been for many years an employe of the defendant. The defendant and the Chicago, Rock Island & Texas Ry. Co. operated their respective lines of railway under and in accordance with the written contract between them, which is above set out, until the Chicago, Rock Island & Gulf Company bought out the Texas Company in 1903. (Tr. pp. 42 and 45.) The Chief Train Dispatcher of the defendant located on the line of the Pacific Company at Chickasha, in the Indian Territory, is also the Chief Dispatcher of the Gulf Company, and he controls from his office at Chickasha the movements of all trains on the lines of the Gulf Company in Texas, as well as those operating on the lines of the Pacific Company after they cross the State line going northward. This dispatcher is a joint employe of both of said companies and they each pay a part of his salary. (Tr. pp. 42 and 43.) The train

crews operating trains across the State line between Texas and the Indian Territory do not stop there, but all such trains are operated and they are all moved under the orders of the Chief Dispatcher issued from his office at Chickasha, who directs all operations on the lines of the Gulf Company in Texas. The daily reports of all cars on the lines of said company are made to the dispatcher at Chickasha and the business could not be handled in any other way. (Tr. p. 44.) The settlements between the two companies are all made on a mileage basis. (Tr. p. 43.) Reports are made by the offices of the Gulf Company to the common president of that company and of the defendant company. (Tr. p. 48.) And the Gulf Company keeps its funds on deposit with the defendant company at Chicago. (Tr. pp. 49 and 51.) When the defendant company constructed its line of road down from the north to Red River in 1892 the Texas Company was organized and the Pacific Company furnished the money with which the line was extended southward from Red River into Fort Worth. (Tr. pp. 44 and 47.) At that time, Mr. Low, the General Attorney for the Pacific Company, held in his name all of the stock of the Texas Company except directors' shares, i. e., one share issued to each of the directors on which they each paid $5.00. Most of these directors of the Texas Company were employes of the Pacific Company. (Tr. pp. 44 and 45.) No dividend has ever been paid on any of this stock and when the Gulf Company took over the property of the Texas Company the directors surrendered their stock in the old company and got back what they had paid on it, viz: $5.00 cash. (Tr. p. 46.) The witness did not know and could not state what consideration, if any, the Gulf Company paid for the property of the other Texas Companies, which it purchased under the enabling act passed by the Texas Legislature in 1903. He said that all he knew about the transaction was that he was informed by a letter from Mr. Leeds, the president of the Pacific Company and of the Texas Company, that the Gulf Company was going to take in the other Texas Companies. The witness was not consulted about the transfer but was simply thus informed of the fact. This transfer to the Gulf Company was made to enable all of these Texas roads to consolidate under one management—the management of the system. (Tr. pp. 46 and 47.) Employes who run over the lines of both the Pacific and Gulf Companies while in Texas are employed and discharged by the latter company, and when they are north of the Texas State line they are in like manner employed and discharged by the Pacific Company. (Tr. pp. 48 and 49.) Since the other Texas Companies were absorbed by the Gulf Company these lines have all been operated in connection with the lines of the Pacific Company in the same manner that they were before the cancellation of the contract between said company and the Texas Company. Trains running over said lines are operated now just as they were before the Texas Company ceased to exist and the trainmen operating such trains are paid by the respective companies in the same way that they were formerly paid, i. e., on a mileage

basis. (Tr. pp. 48 and 49.) This witness, on cross-examination, said that lines of the several Texas Companies which were absorbed by the Gulf Company and those of the defendant were not operated as one line, but that they were operated separately and that their revenues were divided on a mileage basis. That the contract, above mentioned, under which the Pacific Company and the Texas Company were formerly operated was canceled in 1903, prior to the time the Gulf Company bought the Texas road. (Tr. p. 50.) On re-direct examination he said: "In order to get a car or locomotive from that part of the tracks of the Gulf Company that was formerly owned by the Texas Company to the part of the tracks of the Gulf Company that were formerly owned by the Mexico Company and the Choctaw, Oklahoma & Texas Company, we would have to send them up through the Territories over the tracks of the Pacific Company or we would have to send them over the tracks of the Fort Worth & Denver Company from Fort Worth to Amarillo and to Dalhart, respectively." (Tr. pp. 42 to 51.)

A copy of the map of the System lines, as shown by the common folder in use by these companies, has been sent up with the record in this case as Exhibit "C," for the inspection of the Court. (Tr. p. 51.) A copy of the map shown on this folder, copyrighted, is kept painted on the front window of the offices of the agents of the Gulf Company, and calendars with that map printed on them are distributed for the purpose of advertising the System lines. (Tr. pp. 43 and 44.) It was upon this state of facts that the judgment of the trial Court sustaining the motion to quash the service and dismissing the cause for want of jurisdiction over the defendant, was predicated. (Tr. pp. 20 to 53.)

From this judgment the plaintiffs in error have sued out the writ of error herein and they now seek a reversal thereof upon the following assignment of error which was duly filed in the trial Court, viz:

ASSIGNMENT OF ERROR.

Now come the plaintiffs in the above entitled cause, by their attorneys of record, and say that in the record and proceedings in said case there are manifest errors to their prejudice, in this:

The Court erred in quashing the service of process on defendant herein and dismissing plaintiffs' said suit and taxing them with the costs thereof, and in holding that this Court had no jurisdiction over the defendant, for the reason that the evidence introduced on the hearing of defendant's motion to quash service, showed conclusively that the defendant is a foreign railway corporation, doing business in the State of Texas as a common carrier of freights and passengers, and that the Chicago, Rock Island & Gulf Railway Co. is the agent of said defendant company in the State of Texas, and that the persons served with process herein were and are the officers and agents of said Chicago, Rock Island & Gulf Ry. Co. and of the defendant company, and that some of the persons so served

with process therein were in the joint service of both the Chicago, Rock Island & Pacific Railway Company and the Chicago, Rock Island & Gulf Ry. Co., and that the service of process upon said agents, as aforesaid, was legal and valid service upon the defendant, the Chicago, Rock Island & Pacific Ry. Co., and was sufficient to compel it to answer in this cause. And for the errors above assigned plaintiffs pray that the judgment and order of this Court quashing the service of citation on defendant and dismissing said suit, be reversed and said cause remanded for further proceedings therein. (Tr. pp. 56 and 57.)

PROPOSITIONS.

First: The evidence adduced on the trial of the issue above presented, was sufficient to show, and did show, that the Chicago, Rock Island & Gulf Railway Company was an auxiliary corporation and a mere creature of the defendant; that it was completely controlled and dominated by defendant and that the lines of railway in Texas which were being operated in the name of the auxiliary corporation were in fact being operated and controlled by the defendant as a part of its system of railways, and that defendant was in fact doing business in Texas in the name of such auxiliary corporation, wherefore service on such corporation was valid service on the defendant, and gave to the trial Court jurisdiction over it.

Second. One corporation may be, and often is, the agent of another; and in this case the evidence was sufficient to show, and it did show, that the Chicago, Rock Island & Gulf Railway Company was the agent in Texas of the defendant, and the service had upon the officers and agents of the Gulf Company constituted valid service on the defendant, and gave to the trial Court jurisdiction over it.

Third. Under the facts established in this case, S. B. Hovey, the Vice-President and General Manager of the Texas corporation, was such an agent of the defendant, as that the service had on him constituted valid service on the defendant, and such service gave the trial Court jurisdiction over defendant.

Fourth. The service had upon F. E. Merrill, the local agent in Tarrant County, Texas, of the Chicago, Rock Island & Gulf Railway Company, was valid service on the defendant and conferred on the trial Court jurisdiction over it.

Fifth. M. E. Sebree, the trainmaster of the defendant, residing in Tarrant County, Texas, was such a local agent of defendant as that service on him constituted valid service on defendant which conferred on the trial Court jurisdiction over it.

Sixth. A. L. Thomas, defendant's conductor, residing in Tarrant County, Texas, was such an agent of defendant as that service on him in said county in accordance with the Texas Statute was valid service on the defendant and conferred on the Court jurisdiction over it.

Seventh. V. N. Turpin, the ticket agent, who was served with citation herein as an agent of the defendant, was such an agent as that service on him constituted valid service on said defendant and same conferred on the trial Court jurisdiction over it.

Eighth. The plaintiffs were citizens of the State of Texas, residing and having their domicile in the city of Fort Worth in the Northern District of said State, while the defendant was a corporation having its domicile and citizenship in the State of Illinois. Wherefore this suit was properly instituted in the district of the plaintiffs' residence; and legal and valid service of citation having been obtained on the defendant in said district; it was the duty of the trial Court to require the defendant to answer herein and to try and dispose of the case on its merits, and said Court erred in refusing so to do. See Barrow Steamship Co. vs. Kane, 170 U. S., 100-113; L. Ed. Book 42, 964.

Ninth. Where the evidence tends to fix a liability on a party who has it in his power to offer evidence of all the facts as they exist and rebut the inference which the proof tends to establish, and refuses to offer such proof, the natural inference is that the proof, if produced, instead of rebutting would support the inference against him. See Penn. Ry. Co. vs. Anoka Nat'l. Bank, 47 C. C. A., 458, and authorities there cited.

BRIEF OF ARGUMENT.

The Texas Statute relating to service of citation on foreign corporations reads as follows, viz:

"In any suit against a foreign, private or public corporation, joint stock company or association, or acting corporation or association, citation or other process may be served on the president, vice-president, secretary or treasurer or general manager, or upon any local agent within this State, of such corporation, joint stock company or association, or acting corporation or association." (Sayles' Texas Civil Statutes, Vol. 1, Art. 1223.)

Sections 2 and 3 of the Act of the Texas Legislature, which took effect on the 12th day of June, 1905, provides as follows, viz:

"Sec. 2. That service may be had on foreign corporations having agents in this State in addition to the means now provided by law by serving citation upon any train conductor who is engaged in handling trains for two or more railway corporations, whether said railroad corporations are foreign or domestic corporations, if said conductor handles trains over foreign or domestic corporations' track across the State line of Texas, and on a track of a domestic railway corporation within the State of Texas, or upon any agent who has an office in Texas and who sells tickets or makes contracts for the transportation of passengers or property over any line of railway or part thereof, or steamship or steamboat of any such foreign corporation or company.

"Sec. 3. For the purpose of obtaining service of citation on foreign railway corporations, conductors who are engaged in handling trains and agents engaged in the sale of tickets or the making of contracts for the transportation of property, as described in Section 2 of the Act, are hereby designated as agents of said foreign corporations or companies upon whom citation may be served." (Acts of the 29th Legislature, Secs. 2 and 3, p. 30.)

It was in pursuance of this Act that service was had on A. L. Thomas, the defendant's conductor, and on V. N. Turpin, the ticket agent. (Tr. pp. 14 to 17 and 29 and 30.)

The Supreme Court of Texas in the case of Buie vs. The Chicago, Rock Island & Pacific Railway Co. passed on and sustained the validity of service of process had on said defendant, by serving S. B. Hovey, then the Vice-President and General Manager of the Chicago, Rock Island & Texas Railway Co., and by serving J. D. Gilfillin, the ticket agent of said company at its station of Bowie in Montague County, Texas, in accordance with Article 1213 of the Texas Statute above quoted. In that case, as in this, each of the parties thus served, by their affidavits filed in the case denied the alleged agency. Upon the issue thus joined, evidence was taken which consisted principally of the depositions of the officers of the Texas Company including that of Mr. Hovey and the contract between the two companies, above set out as Exhibit A. Upon the trial of the issue thus joined the trial Court, as in the case at bar, accepted the affidavits of the alleged agents denying their agency, as outweighing the facts proven and refused to exercise jurisdiction over the defendant, quashed the service and dismissed the case, at the plaintiff's cost. From this judgment the plaintiff appealed to the Court of Civil Appeals which certified the question at issue to the State Supreme Court. That Court after stating the facts proved, says: "The question submitted involves the determination of the fact, was the Texas corporation organized in good faith by its stockholders as an independent corporate body, or was it organized by the Pacific Company, to be used as an instrument by which the foreign corporation might carry on its business in this State? If the trial Court had found that the Texas corporation was the creature of the foreign corporation and had sustained the service of citation and entered judgment against the Pacific Company, that judgment could not have been set aside by this Court for want of evidence to support its jurisdiction of the person of the foreign corporation. But the trial Court having found to the contrary, and having refused to enter judgment against the foreign corporation, this Court cannot hold that the District Court had jurisdiction upon the facts stated, unless the conclusion to be drawn from the evidence is so definite and certain that the trial Court should have treated it as conclusively established. Counsel for the appellees suggest that a transaction by which a foreign corporation would secure control of a domestic corporation in Texas, as here claimed, would be contrary to the constitution and laws of this State, and that this

Court should presume that the agreement and contract between the parties was not intended to be a violation of the constitution and laws of Texas. In answer to a similar proposition, the Court of Appeals of the State of New York said: 'We have of late refused to be always and utterly trammeled by the logic derived from corporate existence where it only serves to distort or hide the truth.' This Court has always refused to be controlled by technicalities when interposed to prevent an investigation into the real facts of a case. Courts will look beneath the mask of legal forms for the real facts of any transaction presented to them for investigation. * * * * If we view these corporations from any standpoint, it will be difficult to distinguish their corporate powers, management, or officers so as to ascribe any function of corporate control to the Texas Company, and we conclude that the Texas Company is but the instrument used by the Rock Island & Pacific Company to carry on its business in Texas. By organizing the Chicago, Rock Island & Texas Railway Company, and through it operating the railroad in Texas, the Chicago, Rock Island & Pacific Railway Company was doing its business in Texas by and through those persons who purported to represent the sub-corporation, and the principal corporation was legally in Texas through its said agents, and was liable to suits in the Courts of this State by service of process upon the agents which represented it in that business. St. Claire vs. Cox, 106 U. S., 350, 1 Sup. Ct., 354, 27 L. Ed., 222; Hatcher vs. Leasing Co. (C. C.), 75 Fed., 368; Manufacturing Co. vs. Kelly, 160 U. S., 327, 16 Sup. Ct., 307, 40 L. Ed., 444; Pennsylvania R. Co. vs. Anoka Nat'l. Bank, 47 C. C. A., 454, 108 Fed. Rep., 482; Norton vs. Railroad Co. (C. C.), 61 Fed., 618; Interstate Tel. Co. vs. Baltimore & O. Tel. Co. (C. C.), 51 Fed., 49; Montgomery vs. Frobes, 148 Mass., 252, 19 N. E., 342; Day vs. Telegraph Co., 66 Md., 365, 7 Atl., 608." * * * * "The authorities cited fully sustain the proposition that, when one corporation makes use of another as its instrument through which to perform its business the principal corporation is really represented by the agents of the sub-corporation, and its liability is just the same as if the principal corporation had done the business in its own name. No one of the facts or circumstances in evidence would, alone, be sufficient to show the Chicago, Rock Island & Pacific Railway Company subject to the jurisdiction of the Courts of this State, but the combined force of all of these facts and circumstances compels the mind to the conclusion that the chartering of the Chicago, Rock Island & Texas Railway Company was a mere mask under which the Pacific Company carried on its business in Texas.

"We answer that upon the service stated and under the facts related in the statement, the District Court of Montague County had jurisdiction to enter a personal judgment in this case against the Chicago, Rock Island & Pacific Railway Company." (65 S. W., 27 and 30 to 32.)

In avoidance of this decision defendant in error will contend that the contract between the two corporations and upon which this decision of the Court was largely predicated was canceled on April 14th, 1903. (Tr. pp. 24 and 50.) To this contention we reply, ostensibly, yes. But it was proved that the properties of the two corporations are yet operated and controlled just as they were before the cancellation of such contract. (Tr. pp. 29, 42, 48 and 49.) All of the stock of the Gulf Company except one share to each of the ten directors is carried on the books of the company in the name of one man, Wm. Wesley Johnson of New York. (Tr. p. 27.) Who this man was, Mr. Hovey could not tell, though said stock was all sent to him to be voted and he voted it at the last preceding meeting of the stockholders. (Tr. p. 43.) The report of the Rock Island Company, the holding company for the System, shows who is the real owner of said stock and who it is that in fact controls and votes it. By this report it is shown that the stock of the Chicago, Rock Island & Gulf Railway Company is in fact owned and controlled by the defendant company and that the lines of the Gulf Company are a part of the "Rock Island System." It further appears that the System is under the domination and control of the holding company above named. (Tr. p. 40.) The report of the defendant company to its stockholders shows conclusively that the Gulf Company is one of the defendant's "auxiliary companies forming said system." And as we construe said report, it conclusively shows that such auxiliary company is completely dominated and controlled and that its lines are in fact operated by the defendant company. (Tr. pp. 37 to 41.) Do not these facts, so clearly proved, show conclusively that the auxiliary company is the agent in Texas of the defendant company and that the latter is in fact doing business in Texas in the name of the former? We submit that they do and that the proved and admitted facts are not susceptible of any other construction. Since the defendant company so completely owns, dominates and controls the auxiliary corporation through its ownership of the stocks and bonds of the latter company the contract above mentioned became useless and its cancellation did not lessen or affect the control of the defendant over the subordinate corporation. If we are right in this contention, it follows that the service had on the officers and agents of the latter company was valid service on the defendant. Buie vs. C. R. I. & P. Ry. Co., above cited, and the authorities there cited and reviewed. See also the following authorities, viz:

Northern Securities Co. vs. United States, 193 U. S., 197.
L. Ed. Book 48, pp. 694, 695 and 696.
Van Dresser vs. Oregon Ry. & Nav. Co., 48 Fed. Rep., 202.
Norton vs. A. T. & S. F. Ry. Co., 61 Fed., 618 (C. C.).
Lehigh Valley Ry. Co. vs. Dupont, 128 Fed., 841 and 845 and 846 (C. C.).
Newcomb vs. N. Y. Cent. Ry. Co., 81 S. W., 1072 and 1073. (Mo.)
Oriental Invest. Co. vs. Barclay, 64 S. W., 87 and 88. (Tex.)

Penn. Ry. Co. vs. Anoka Nat. Bank, 47 C. C. A., 457 and 458.

Hatcher vs. Leasing Co., 75 Fed., 368. (C. C.)

C. & O. Ry. Co. vs. Howard, 178 U. S., 153 to 167, L. Ed. Book 44, pp. 1017 to 1020.

Tuchband vs. C. & A. Ry. Co. (N. Y.), 115 N. Y., 437, 22 N. E., 360.

6 Thom. Corp., Secs. 7505, 8034, 8037 and 8038.

Barrow Steamship Co. vs. Kane, 170 U. S., 100-113, L. Ed. Book 42, 966 to 969.

The facts of the case at bar are strikingly similar to the facts of the Northern Securities Company case above cited. In both cases a holding company was formed and incorporated under the laws of New Jersey which acquired the stock of the constituent railway companies forming the respective systems of railways. In each instance the holding company acquired a majority of the stock of the constituent companies and it thus secured control of such companies through the ownership of such stock.

In the case at bar, the Annual Report of the C. R. I. & P. Ry. Co., above mentioned, shows that the Board of Directors of said company consists of thirteen members, while the Executive Committee of said company consists of eight members. The report of the Rock Island Company, above mentioned, shows that the Board of Directors of said company consists of sixteen members while its Finance Committee consists of six members. Eleven members of the Board of Directors of the Railway Company are also members of the Board of Directors of the Rock Island Company. Five members of the Executive Committee of the Railway Company are also members of the Finance Committee of the Rock Island Company. All of the officers of the Rock Island Company as given in said report of said company were, with two exceptions, shown to be also officers of the Railway Company, as disclosed by the report of said company.

These reports show that a majority of the officers and directors of each of said companies are common to both of them.

Uniformity in the management and control of such companies, was thus effectively lodged in the holding company and all competition between the subordinate corporations was effectively stifled since the same individuals controlled and managed the holding company and all of the constituent companies. These subordinate companies were thus all placed under one management and their existence as independent companies ceased. In the Northern Securities Company case, this Court said: "By this purchase of stock, the Great Northern and Nothern Pacific acquired full control of the Chicago, Burlington & Quincy main line and branches." 193 U. S., p. 321, L. Ed. 48, 694. After summarizing the facts, the Court continues:

"Necessarily by this combination or arrangement the holding company in the fullest sense dominates the situation in the interest of those who were stockholders of the constituent companies; as

much so for every practical purpose, as if it had been itself a railroad corporation which had built, owned, and operated both lines for the exclusive benefit of its stockholders. Necessarily, also, the constituent companies ceased, under such a combination, to be in active competition for trade and commerce along their respective lines, and have become practically, one powerful consolidated corporation, by the name of a holding corporation, the principal, if not the sole, object for the formation of which, was to carry out the purpose of the original combination under which competition between the constituent companies would cease." (193 U. S., p. 694.)

We submit that this language is applicable to, and properly characterizes the combination disclosed by the evidence in the case at bar. In the case of Chesapeake & Ohio Ry. Co. vs. Howard, this Court in discussing a somewhat similar combination of railway companies says: "The evidence shows that in each of the three corporations there was but one controlling and guiding hand; that all the steps taken were steps in the direction of establishing, organizing and maintaining a continuous line of road from one ocean to the other, and that the various contracts, arrangements and leases were but means to accomplish this one purpose." (178 U. S., p. 1020.)

In the case of Lehigh Valley Ry. Co. vs. Dupont, above cited, the Circuit Court of Appeals of the Second Circuit, in passing on the sufficiency of the facts to sustain the judgment rendered, used the following language, namely: "The title to the franchises, privileges and property of the Easton & Amboy Railroad Company was vested in that corporation, and the railroad upon which the deceased was killed, was operated and maintained financially and physically by that corporation; but the potential and ultimate control of all its property and business affairs was lodged in the defendant, and this control was exercised as completely and as directly as the machinery of corporate organism would permit. Inasmuch as, under the laws of New Jersey, the Easton & Amboy Railroad Company was incable of transferring to the defendant its franchises, privileges and property and the defendant could not acquire them, the defendant was not in legal contemplation the owner nor operating the Easton & Amboy Railroad. But the law does not prevent one railroad corporation from making a contract with a passenger to carry him beyond its own road and upon or over the connecting roads of another railroad corporation and assume toward him all the ordinary obligations of a passenger carrier during the transit. The contract being incidental to one to carry him over its own road, is not ultra vires. Nor is it ultra vires for a railroad corporation to agree with other railroad corporations upon such terms of co-operation in transacting their joint business as may be satifactory. And where the lines of several railroad corporations are conducted as a single system for the purpose of the traffic between different points originating upon either, the corporations may constitute themselves a partnership for the business of such traffic; and when they do, although the general management of each road is retained by the

corporation owning it, the several corporations are, as to such business, partners, and liable upon the principles of the law of agency. When a relation of joint and several agency exists in a system of dominant and subordinate carriers, the dominant carrier is liable for all breaches of obligation by any of the other constituent carriers in the performance of a contract made by it for the transportation of passengers or freight. These propositions are established by the following authorities: Swift vs. Pacific Mail Steamship Co., 106 N. Y., 206, 12 N. E., 583; Philadelphia etc. Ry. Co. vs. State, 58Md., 372; Wyman vs. Chicago etc. R. Co., 4 Mo. App., 578; Bradford vs. So. Car R. Co., 7 Rich. Law, 201, 62 Am. Dec., 411; Harris vs. Cheshire R. Co. (R. I.), 16 Atl., 512; Block vs. Fitchburg R. Co., 139 Mass., 308, 1 N. E., 348; Independent Mills Co. vs. Burlington etc. Ry. Co., 72 Iowa, 535, 34 N. W., 320, 2 Am. St. Rep., 258; Cincinnati R. Co. vs. Spratt, 2 Duv. (Ky.), 4; Barter vs. Wheeler, 49 N. H., 9, 6 Am. Rep., 434. We find nothing inconsistent with these propositions decided in Pennsylvania R. Co. vs. Jones, 155 U. S., 333, 15 Sep. Ct., 136, 39 L. Ed., 176. Especially should the dominant corporation be regarded as the principal and the constituent corporation as agent when, as in this case, the dominant corporation ultimately derives all the profits and incurs all the losses arising from the traffic originating on any of the lines. We conclude that the relations of the defendant with the Easton & Amboy Railroad Company in respect to the traffic originating on the lines of either, were those of a principal and its agent." (128 Fed. Rep., pp. 845 and 846.)

In the case of Norton vs. A. T. & S. F. Ry. Co., the Circuit Court of the Southern District of California in passing on a motion to quash the service of summons upon a statement of facts very similar to those in the case at bar, denied the motion and held the service sufficient to compel the defendant to answer. The Court in that case held: "A foreign railroad company which runs its trains over the tracks of other companies, forming with it a 'system' or 'route' into California, and there solicits and obtains freight and passenger business through the general manager of one of the subordinate companies and his assistants, may be legally served by service upon him as the 'managing and business agent' in the State (Code Civ. Proc. Cal., Sec. 411), of such foreign company, although it has never directly designated him as its agent." (61 Fed. Rep., p. 618.)

In the case of Van Dresser vs. Oregon Ry. & Nav. Co. the Circuit Court in passing on the sufficiency of the service to compel the defendant to answer, held:

1st. "The Union Pacific Railway Company, having formed a combination, under the name of the 'Union Pacific System' with various other companies, including the Oregon Short Line Company, which operates a railroad in Washington, and being engaged in making contracts therein for freight and passenger service under the name of the system, must be considered as doing business in that State, and a service of summons upon an agent therein, who is

authorized to act for all the companies of the system, is a service upon the corporation.

2nd. "When a domestic corporation owning a railroad in the State leases the same to another company without the authority or consent of the State, but continues its corporate existence, and receives a revenue under the lease, its lessee must be considered as its agent to carry on the business; and in an action for a tort committed in operating the road, service of summons upon the agents of the lessee is service upon the lessor company.

3rd. "When a State law provides that service may be made upon a foreign corporation doing business therein by serving the summons upon its agents, any foreign corporation subsequently doing business in the State is deemed to consent to this condition, and is bound by a service in the method prescribed.

4th. "The rules of precedure prescribed by the State for obtaining service upon a foreign corporation doing business therein govern the Federal Courts, and service in the manner prescribed confers upon them jurisdiction over such corporation." (48 Fed. Rep., 202.)

In the case of Newcomb vs. New York Cent. H. R. Ry. Co. the action was brought in the Circuit Court of Missouri and service was had on the defendant by serving two domestic corporations as the agents of the foreign corporation. The latter plead to the jurisdiction of the Court over it and sought to quash the service on two grounds, viz: "First, that the statements in the sheriff's return are not true as the affiants show. Second, on the face of the return the defendant is not legally summoned." In passing on the second proposition thus presented the Supreme Court of Missouri said: "As to the return itself there are several points urged against its sufficiency, viz: That a corporation is not an agent for another corporation, within the meaning of Section 570, Rev. St. 1899, relating to service of process on a foreign corporation; therefore, the alleged service on the two railroad companies named as agents in the return is illegal. That the return does not show that defendant is a foreign corporation, or that it has no office or place of business in this State, or that Saffarans is the kind of agent contemplated by the statute. The statute in question is part of Section 570, Rev. St. 1899. Fourth, when defendant is a corporation or joint stock company organized under the laws of any other State or country and having an office, or doing business in this State, the summons may be executed by delivering a copy of the writ and petition to any officer or agent of such corporation or company in charge of any office or place of business, or, if it have no office or place of business then to any officer, agent or employe in any county where such service may be obtained, etc." * * * * "If the statute is construed to mean that only an individual can act as the agent to receive service of process for the foreign corporation, then the foreign corporation, by selecting another corporation through whom to transact its business here, may escape service of process altogether. The statute is comprehensive enough to include a corpora-

tion in the term 'agent' and, if the writ is to be served on a corporation as agent, it must be served in the manner of serving corporations in their own behalf, for there is no other way in which to serve them. We hold that if a foreign corporation transacts business here through the agency of another corporation, it may under Section 570, Rev. St. 1899, be served with process through that agency." (81 S. W., pp. 1072 and 1073.)

In the case of Oriental Investment Company vs. Barclay, the defendant company, a Missouri corporation, had leased to the Oriental Company, a Texas corporation, a hotel located in Dallas, Texas. The plaintiff, an employe of the latter company, was injured by the falling of an elevator. The defendant plead that the lessee was operating the property and was alone responsible for its negligence. The plaintiff charged that the Texas corporation was a mere creature of the lessor company and that same was owned and controlled and dominated by the Missouri corporation. The issue thus raised was determined against the defendant and on appeal the Appellate Court in passing on the question thus presented, said: "If the relation between the investment company and the operating company, the Oriental, was a mere cloak to cover up fraud, then there can be no doubt but the Court is authorized to ignore the apparent relation between the parties in order to circumvent the fraud. (Cook, Corp., Secs. 6, 663.) And in the absence of fraud it has been held that where a railroad company cause a telegraph company to be incorporated, and subscribed to all of its stock, and appoints all of its officers, and holds it out as the future owner of a telegraph system which the railroad owns, and then sells that system to some one else, a person contracting with the telegraph company on the faith of the scheme being carried out may hold the railroad company liable on the contract, on the principle of the principal being liable on the contracts of its agent. Interstate Tel. Co. vs. Baltimore & O. Tel. Co. (C. C.), 51 Fed., 49; Baltimore & O. Tel. Co. vs. Interstate Tel. Co., 4 C. C. A., 184, 54 Fed., 50. Again, it is held that where the corporation does business by organizing branch corporations, and the stockholders in the latter are disregarded, and the main corporation pays up the stock and manages without regard to its corporate character, the property of the branch corporation, it is subject to the debt of the parent company. Day vs. Telegraph Co., 66 Md., 354, 7 Atl., 611. If a company leases all of its property to another, the stockholders in both being the same, a mechanic's lien good against the latter company is also good as against the company owning the property. Hatcher vs. Leasing Co. (C. C.), 75 Fed., 368." (64 S. W., pp. 87 and 88.)

The judgment of the trial Court was affirmed and a writ of error was denied by the Supreme Court. (64 S. W., pp. 87 and 88.)

In Thomp. on Corps. the principle contended for is stated as follows, to-wit: "It is very clear that the relation between the parent corporation, so to speak, and a sub-corporation, organized to exploit its business in another State, may be that of principal and

agent. Indeed, the subordinate corporation may be a mere dummy, created by the principal corporation to effect its purposes, in such a sense that the principal corporation will be liable for its debts, and even for its torts." (6 Thomp. Corp., Sec. 8034.)

"It has been frequently held that where a foreign corporation does business within the domestic State, the person who, as its agent, does that business, should be considered its 'managing agent' for the purpose of serving process against it under such a statute; and more especially so where the foreign corporation has an office or place of business within the domestic State, which office is in charge of such agent, who acts for the corporation. He is there doing business for it, managing its business, and is regarded, in every sense of the word used in the statute, as its 'managing agent.' Such person is an agent of the corporation, within the meaning of a general statute permitting process against it to be served upon an officer, director, agent, clerk or engineer of the corporation. This principle is embodied in a statute of Texas, applicable alike to domestic and to foreign corporations under which a foreign corporation may be sued in that State if it carries on business there, by service of process on its local agent within the county where such local agent carries on its business." (6 Thomp. Corp., Sec. 8038.)

We assume that these authorities are sufficient to establish the proposition contended for by the plaintiffs in error, viz: 1st, that one corporation may act as the agent for another.

2nd. That service may be had on the principal corporation by serving the subordinate corporation as an agent.

3rd. That process is properly served on such subordinate corporation and through it on its principal, by serving its officers or agents in the same manner as if it were itself the defendant.

4th. That such officers and agents of the subordinate corporation will be treated as agents of the dominant corporation and service of process on them as such agents in the manner prescribed by the statute, will constitute valid service on the defendant.

5th. We submit that the facts established by the agreement of counsel for the defendant and by evidence that was undisputed, shows conclusively that the Chicago, Rock Island & Gulf Railway Company was and is controlled and dominated by defendant in such a way and to such an extent as to make it such a local agent of defendant in Texas as is contemplated by Art. 1223 of the Texas Statutes, above quoted, and we further submit that such facts show conclusively that S. B. Hovey, F. E. Merrill and M. E. Sebree who were severally served with process in this case were each and all such agents of defendant as is contemplated by said statute. It appears to us that the statements contained in the defendant's report to its own stockholders to the effect that the Chicago, Rock Island & Gulf Railway Company was one of the auxiliary companies forming the "Rock Island System," and that the lines of such company were operated by said system, should forever settle the question at issue against the defendant. (See Tr. 37 to 39.) If we are

right in this contention, it follows that the judgment of the trial Court was erroneous and that it should be reversed and the case remanded for a trial on the merits. If, however, it should be held that we are in error as to some of the propositions contended for, we nevertheless submit that the service of process had upon A. L. Thomas, defendant's conductor, and on V. N. Turpin, its ticket agent, was valid, and was such as to require defendant to appear and plead to the merits of the case. No objection was urged to the manner or form of the service on these alleged agents, but the validity of the service was assailed solely upon the following grounds, viz: 1st, It was denied that either of these parties at the time of the service on them were agents or employes of the defendant in Texas, and 2nd, it was asserted that the statute authorizing such service was insufficient to sustain a personal judgment against the defendant. See defendant's Supplemental Motion to quash the service in question. (Tr. p. 17.) The affidavits of the parties thus served were attached to said motion as a part thereof, and it was shown by the affidavit of A. L. Thomas "That he is and has been for a number of years a passenger conductor, residing at Fort Worth, Texas, running over the line of the road of the Chicago, Rock Island & Gulf Railway Company and of the Chicago, Rock Island & Pacific Railway Company between Fort Worth, Texas, and Caldwell, Kansas. That he is employed by each company while running on its line of road, and paid by each company for the service rendered it. That he runs from Fort Worth, Texas, to the Texas State line over the line of the Chicago, Rock Island & Gulf Railway Company, and that from the Texas State line to Caldwell, Kansas, he runs over the line of the Chicago, Rock Island & Pacific Railway Company." (Tr. p. 18.)

By the affidavit of V. N. Turpin it was shown "that he is and has been for a long time the city ticket agent of the Chicago, Rock Island & Gulf Railway Company, in Fort Worth, Texas, and that in the performance of his duties as such he has sold and customarily sells tickets good for passage over the line of the Chicago, Rock Island & Gulf Railway Company, and any other connecting lines which the purchaser desires to travel over, and that he has thus sold tickets over the Chicago, Rock Island & Gulf and the Chicago, Rock Island & Pacific Railway Company's lines." (Tr. p. 19.)

It is thus made to appear affirmatively that the parties thus served with process at the time of such service, sustained to the defendant the exact relation prescribed by Texas Statute regulating such service. It is further apparent that such statute was enacted to provide for the service of process in just such cases as this one and to meet the conditions here presented. The real question at issue, therefore, is: Had the Texas Legislature the power to enact such law? If yea, then the service on Thomas and Turpin was valid service on the defendant.

In Barrow Steamship Co. vs. Kane, 170 U. S., pp. 107 and 108,

L. Ed. 42, p. 967, this Court speaking through Mr. Justice Gray, said: "The manifest injustice which would ensue, if a foreign corporation, permitted by a State to do business therein, and to bring suits in its Courts, and thus, while allowed the benefits, be exempt from the burdens, of the laws of the State, has induced many States to provide by statute that a foreign corporation making contracts within the State shall appoint an agent residing therein, upon whom process may be served in actions upon such contracts. This Court has often held that wherever such a statute exists service upon an agent so appointed is sufficient to support jurisdiction of an action against the foreign corporation, either in the Courts of the State, or, when consistent with the acts of Congress, in the Courts of the United States held within the State; but it has never held the existence of such a statute to be essential to the jurisdiction of the Circuit Courts of the United States. Lafayette Ins. Co. vs. French, 59 U. S., 18; How. 404 (15: 451); Ex parte Schollenberger, 96 U. S., 369 (24: 853); New England Mut. L. Ins. Co. vs. Woodworth, 11 U. S., 138, 146 (28: 379, 382); Shaw vs. Quincy Mining Co. (Ex parte Shaw), 145 U. S., 444, 452 (36: 768, 772)."

In New York & C. Ry. Co. vs. Estill, this Court in passing on the vaiidity of service made under, and in accordance with a State statute similar to the one under consideration, said: "The principle applicable under such circumstances is, that, if the corporation does business in the State, it will be presumed to have assented to the statute and will be bound accordingly." (147 U. S., 607, L. Ed. 37, 301.) To the same effect is the holding in ex parte Schollenberger, 96 U. S., 369, L. Ed. 24, 853 to 855. In R. R. Co. vs. Harris, 12 Wall., 65, L. Ed. 20, 354, the Court said: "It (a corporation) cannot migrate but may exercise its authority in a foreign territory upon such conditions as may be prescribed by the law of the place. One of these conditions may be that it shall consent to be sued there. If it do business there it will be presumed to have assented and will be bound accordingly."

In Insurance Co. vs. French, 18 How., 404 and 409, L. Ed. 15, 453, it is said: "Process can be served on a corporation only by making service thereof on some one or more of its agents. The law may and ordinarily does designate the agent or officer on whom process is to be served. For the purpose of receiving such service and being bound by it the corporation is identified with such agent or officer. The corporate power to receive and act on such service so far as to make it known to the corporation is thus vested in such officer or agent." To the same effect is the decision of the U. S. Circuit Court in the case of Dizzy vs. Ill. Cent. Ry. Co., 61 Fed. Rep., 52 and 53. In Merchants Mfg. Co. vs. Ry. Co., 63 How. Pr. (N. Y.), 459, it was held, that a foreign corporation consents to be amenable to suits by such mode of service as the law of the State provides when it invokes the comity of the State for the transaction of its business.

In Van Dresser vs. Oregon Ry. & Nav. Co., 48 Fed. Rep., 205, it is said: "By numerous decisions, it is established as a part of the common law of this country, that where a State makes conditions upon which foreign corporations may do business and provides a method whereby the Courts of the State may acquire jurisdiction over them by service of process upon designated agents within the State, a foreign corporation subsequently doing business in the State is deemed to consent to the conditions and to be found by the service of process in the manner specified by the statute."

The Indiana Statute of 1853 authorized service of process on a railway company to be made by serving a conductor of one of its trains. This statute was held to be valid and such service was held to be sufficient to require the defendant to appear and answer to a summons thus served, in the following cases, viz: Railway Co. vs. Grooms, 90 Ind., 245; Railway Co. vs. Tilton, 12 Ind., 4; Railway Co. vs. Powell, 13 Ind., 273; Railway Co. vs. McDougall, 108 Ind., 180. Service had upon a conductor in accordance with a statute of Michigan has been held to be valid by the Supreme Court of that State. Fowler vs. Railway Co., 7th Mich., 79. Such service has likewise been upheld in Illinois Railway Co. vs. Keep, 22 Ill., 15 and 16. We submit that the foregoing authorities conclusively establish the following propositions, viz: First, that the Legislature of the State of Texas had the power and authority to designate the officers, agents and employes of foreign corporations doing business in the State upon whom service of process can be had. Second, that it had the power and authority to designate the conductors engaged in handling the defendant's trains across the State line into said State, and the ticket agents in the State who are engaged in selling tickets and making contracts for transportation over defendant's line of railway, or any part thereof; as agents of defendant upon whom service of process might be had, and Third, that the service had in accordance with such statute on such conductor and ticket agent, was valid and binding on the defendant provided it was in fact doing business in Texas. Assuming these propositions to be established, the only question to be determined is, was the defendant in fact doing business in Texas at the time of the service in question? If yea, such service was unquestionably valid. That A. L. Thomas at the time of the service of citation on him was a train conductor who was engaged in handling trains belonging to defendant, for it and for the Chicago, Rock Island & Gulf Ry. Co., and that he handled such trains over the tracks of both the foreign and domestic corporations and across the State line of Texas and on the track of the domestic corporation in said State, is an admitted fact. (Tr. pp. 18 and 29 and 30.) That V. N. Turpin at the time of the service on him was a ticket agent who had an office in Texas, and who sold tickets and made contracts for the transportation of persons and property over the defendant's lines of railway and all of its connections was likewise an admitted fact. (Tr. pp. 19 and 30.) That the

Chicago, Rock Island & Gulf Railway Company was one of the defendant's auxiliary companies, was also a conceded fact. (Tr. pp. 37 to 39.) That the defendant company was the owner of at least a majority of the capital stock of all its subsidiary companies forming the "Rock Island System," among which was the Chicago, Rock Island & Gulf Ry. Co., was proven by the report of the "Rock Island Company," the holding company for the Rock Island System, made to its stockholders. The correctness of this report was not disputed. (Tr. pp. 40 and 41.) That the Rock Island Company was practically the owner of all of the capital stock of all the constituent companies comprising the Rock Island System was also shown by said report. (Tr. pp. 40 and 41.) That all of the officers of the Rock Island Company, with two exceptions, were also officers of defendant company and that a majority of the officers and directors of each of said companies are common to both of them, was shown by the reports of said companies to their respective stockholders. It was thus made apparent that the entire Rock Island System of Railways was under one management and that it was in fact under the control of the same individuals. (Tr. p. 41.) It was admitted that when the lines of the Texas corporation were originally constructed, the money used in such construction was furnished by the defendant, and it is abundantly proved that said lines were in fact construed under its supervision. (Tr. pp. 24 and 25.) The Texas corporation upon its organization elected as its officers a number of the defendant's old employes who had been in its service for several years. (Tr. pp. 24 and 25.) Soon after it was thus organized the Texas Company and the defendant entered into the written contract above set out, whereby the control of the latter over the former was secured and provided for. (Tr. pp. 30 to 36.) This contract remained in force and was observed until after it was denounced by the State Supreme Court in the Buie case, above cited. (Tr. p. 24.) Thereupon it was formally canceled, but the lines of the two companies were in fact thereafter operated just as they were before such cancellation. (Tr. 48-49.) The expenses incurred by, and the revenues derived from, the joint operation of the lines of the two companies are borne by, and divided between, said companies on mileage basis just as they were divided under the original agreement. (Tr. pp. 49 and 50.) Each company thus shares in the profits and losses of the common enterprise. In the case of the Lehigh Valley Ry. Co. vs. Dupont decided by the Circuit Court of Appeals of the Second Circuit, it was held that "Where the lines of several railroad corporations are conducted as a single system for the purpose of the traffic between different points, originating on either, and such corporations divided the proceeds of such business on a mileage basis, the several corporations as to such business were partners and liable to third persons on the principles of the law of agency." 128 Fed. Rep., 841. The deceased engineer, on account of whose death this action was brought, it was alleged was at the

time of his death an employe of the defendant serving as a locomotive engineer on one of defendant's trains running on the division between Fort Worth and Chickasha. (Tr. p. 3.) He therefore was in the joint service of the defendant and of the Texas Company, each of which paid him for his services in proportion to the number of miles he ran over their respective lines. (Tr. p. 49.) North of the Texas State line he was called an employe of the defendant while south of that line he was denominated an employe of the Texas Company. His employers were thus ostensibly changed instantly whenever he crossed said line. However he continued to wear the uniform and the badges of the defendant company on both sides of said line (Tr. p. 26), and he was subject to be discharged from the service of both companies by either one of them. (Tr. p. 48.) The movements of his train over the track on both sides of said line were all controlled by the joint train dispatcher located at Chickasha, and such trains were all made up under the orders of the joint trainmaster located at Fort Worth. The same thing was true of all other trains and trainmen running across said line. (Tr. pp. 26, 28, 42 to 44 and 51.)

In view of these conceded and proved facts, how can it be successfully contended that defendant was not doing business in Texas within the purview of the Texas statute? The Supreme Court of Texas upon a state of facts similar to, but less conclusive and cogent, than are the facts in this case, explicitly held that "no one of the facts or circumstances in evidence would alone be sufficient to show the Chicago, Rock Island & Pacific Railway Company subject to the jurisdiction of the Courts of this State but the combined force of all these facts and circumstances compels the mind to the conclusion that the chartering of the Chicago, Rock Island & Texas Railway Company was a mere mask under which the Pacific Company carried on its business in Texas." It was therefore held, that the trial Court by the service of its process on the agents of the Texas Company, acquired jurisdiction over the Chicago, Rock Island & Pacific Railway Company, to enter a personal judgment against it. See Buie vs. C. R. I. & P. Ry. Co., 65 S. W. Rep., 31 and 32. This decision has settled the question at issue in the State Courts. But the contest is renewed in the national Courts. Will not these Courts in construing a State statute follow the construction placed thereon by the State Courts? Such we understand to be the ruling of this Court. York vs. State of Texas, 137 U. S., 15-21, L. Ed. 34, 604; B. & O. Ry. Co. vs. Baugh, U. S. Book 37, 774.

In Penn Ry. Co. vs. Anoka Nat'l. Bank, 47 C. C. A., 457, the Circuit Court of Appeals of the Eighth Circuit, Caldwell, C. J., delivering the opinion of the Court stated the question there at issue as follows: "The goods were lost on the line of the last carrier, and the only material contested question of fact in the case was whether the defendant was the last carrier, or was liable as such. The plaintiff maintained that it was. The defendant maintained that it

was not, but that the Philadelphia, Wilmington & Baltimore Railroad Company was the last carrier, and carried the goods from Baltimore to Frederick Road, where they were lost." Upon the question thus presented, the Court said:

"While the Philadelphia, Wilmington & Baltimore Railroad Company is a separate legal entity, according to the testimony, it sustained towards the defendant company the relation of a dummy more nearly than that of an independent, self-governing railroad company. Upon the testimony the jury might well find that the corporate existence of the Philadelphia, Wilmington & Baltimore Railroad Company was maintained by and for the use of the defendant company, and that the defendant company held it out to the world as a part of its system, for whose acts it was responsible. We think the jury might rightfully infer from the evidence that, if a recovery could be had against the Philadelphia, Wilmington & Baltimore Railroad Company on the plaintiff's claim the result to the defendant in a financial sense would be precisely the same as if the recovery had been against it. It seems highly probable from the testimony that the losses and gains of the Philadelphia, Wilmington & Baltimore Company are in the end the losses and gains of the defendant company. As before stated, the officers of the two roads are very largely the same persons, and the dominion of the Pennsylvania Railroad Company, the plaintiff in error, over the Philadelphia, Wilmington & Baltimore Company, seems to have been complete and unquestioned. At least there was evidence from which a jury might rightfully infer such was the case. The defendant company, of course, knew exactly the relation it sustained to the Philadelphia, Wilmington & Baltimore Company, and, if it was not such as the mass of testimony introduced by the plaintiff strongly tended to show it to be, it was open to it to produce convincing evidence of the fact, and show precisely what the relation was; and, not having done so, every inference warranted by the evidence may justly be indulged against it. Where the evidence tends to fix a liability on a party who has it in his power to offer evidence of all the facts as they existed, and rebut the inferences which the proof tends to establish, and he refuses to offer such proof, the natural inference is that the proof, if produced, instead of rebutting, would support the inference against him." (Pages 457 and 458.)

This language may be properly applied to the case at bar. Upon what theory the learned trial Judge predicated his ruling we are at a loss to know. But we suspect that he has misconstrued the decision rendered by this Court in the case of Pullman Palace Car Co. vs. Mo. Pac. Ry. Co., 115 U. S., 587 to 598, L. Ed. 29: 499. In that case the Pullman Company sued the Railway Company to enjoin the latter and the St. Louis, Iron Mountain & Southern Ry. Co. from discontinuing the use of the former's cars on the line of the St. Louis, Iron Mountain & Southern Railway Company.

It was charged that the Pullman Company had entered into a written contract with the Mo. Pac. Ry. Co. whereby it was agreed that the plaintiff should have the exclusive right for a period of fifteen years from the date of the agreement to furnish the defendant with drawing-room and sleeping cars sufficient to meet all the requirements of travel on all passenger trains of the defendant over its entire line of railway and on all roads which it controls or may hereafter control by ownership, lease or otherwise. That said defendant by said agreement bound itself not to contract with any other company to haul cars of the same class in its trains for the time specified. This agreement, which was dated March 8th, 1877, was made by the plaintiff with the original Missouri Pacific Ry. Co. But it was further shown that this company was subsequently reorganized and was consolidated with certain other railroad companies and the lines of all such companies were consolidated into a single system. The reorganized company took the name of the Missouri Pacific Railway Company, but the original company of that name and with which plaintiff made its contract ceased to exist with the reorganization. Subsequently the new company acquired a majority of the stock of the St. Louis, Iron Mountain & Southern Ry. Co. and thereafter the two properties were under the same general management but they were each operated independently, the one of the other. The Pullman Company had with the Iron Mountain Company, a contract for the use of its cars on the lines of that company similar to that which it had with the original Missouri Pacific Company, which contract had expired and which the Iron Mountain Company had declined to renew. The purpose of the plaintiff's bill was to force this latter company through its connection with the Missouri Pacific Company to continue the use of the Pullman cars on the lines of the Iron Mountain Company and to enjoin it from discontinuing the use of its cars. The Court stated the question presented for its decision as follows, to-wit: "1. Whether the contract between the Missouri Pacific and Pullman Companies made before the consolidation binds the consolidated company to haul the Pullman cars over the road of the St. Louis, Iron Mountain & Southern Company if that road is controlled by the consolidated company within the meaning of the contract, and 2nd, whether it is so controlled by the consolidated company." Upon the question thus presented the Court says: "The new company assumed on the consolidation all the obligations of the old Missouri Pacific. This requires it to haul the Pullman cars, under the contract, on all roads owned or controlled by the old Company at the time of the consolidation, but it does not extend the operation of the contract to other roads which the new company may afterwards acquire. The power of the old company to get the control of other roads ceased when its corporate existence came to an end, and the new company into which its capital stock was merged by the consolidation undertook only to assume its

obligations as they then stood. It did not bind itself to run the cars of the Pullman Company on all the roads it might from time to time itself control, but only on such as were controlled by the old Missouri Pacific. Contracts thereafter made to get control of other roads would be the contracts of the new consolidated company, and not of those on the dissolution of which that company came into existence. It follows that the present Missouri Pacific Company is not required by the contract of the old company, to haul the Pullman cars on the road of the St. Louis, Iron Mountain & Southern Company, even if it does now control that road, within the meaning of the contract.

"We are also of the opinion that the railroad of the St. Louis, Iron Mountain & Southern Company is not controlled by the present Missouri Pacific Company in such a way as to require that company to haul the Pullman cars over it, if the contract is binding on the new company to the same extent it would be on the old were that company still in existence and standing in the place of the new. Confessedly, the St. Louis, Iron Mountain & Southern Company keeps up its own corporate organization. It operates its own road. It has its own officers and makes its own bargains. The Missouri Pacific owns all its stock, and in that way can determine who shall constitute its boards of directors; but there the power of that company over the management stops. The board when elected has controlling authority, and for its doings is not necessarily answerable to the Missouri Pacific Company. The two roads are substantially owned by the same persons and operated in the same interest, but that of the St. Louis, Iron Mountain & Southern Company is in no legal sense, controlled by the Missouri Pacific." (Ib.) L. Ed. (29: 501 and 502.)

Is the decision rendered in that case decisive of the question presented in the case at bar? Counsel for defendant in error so contend and the trial Court seems to have sustained the contention. This ruling we submit was erroneous. In that case no actual control of the Iron Mountain Company and of its property by the Missouri Pacific Company was shown. But on the contrary, it appeared that the former company in fact operated its own road, had its own officers and made its own bargains. In the case at bar, we contend that the undisputed facts show that the Chicago, Rock Island & Pacific Railway Company not only actually dominates and controls the Chicago, Rock Island & Gulf Railway Company but that it, in fact, operates, in the name of said company all of the Texas lines embraced in the Rock Island System. In other words, the evidence in the present case, as we construe it, conclusively shows that the defendant at the time of the service on its alleged agents was doing business in Texas under the name and pseudonym of its auxiliary company. We therefore submit that the Trial Court by the service in question acquired jurisdiction over the defendant and that it

erred in refusing to take and exercise such jurisdiction and in refusing to try the case on its merits. For this error we pray that the judgment of the Trial Court be reversed and that the case be remanded for a trial on the merits.

Respectfully submitted,

Blewand and Templeton
S. W. Blewand & A. Templeton

Wm. Sam J. Hunter

Attorneys for Augusta A. Peterson and Ida Peterson, Plaintiffs in Error.

F. J. Boman

Of Counsel for Plaintiffs in Error.

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IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1906.

AUGUSTA A. PETERSON AND IDA PETERSON, A MINOR, *Plaintiffs in Error*,
v.
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, *Defendant in Error*.
} No. 225.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

ARGUMENT FOR THE DEFENDANT IN ERROR.

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Attorney for Defendant in Error.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

ARGUMENT FOR THE DEFENDANT IN ERROR.

STATEMENT.

This action was commenced in July, 1904, in the Circuit Court of the United States for the Northern District of Texas, to recover damages for the death of John Peterson, who died from injuries sustained by him at Chickasha, Indian Territory, while in the service of the defendant in error as locomotive engineer. It is alleged in the petition that the plaintiffs are

citizens of the State of Texas, and that the defendant, hereinafter called the Rock Island Company, is incorporated under the laws of the State of Illinois, and that it owned and operated as a common carrier of freight and passengers a line of railway extending from Chicago, Illinois, through the Indian Territory to the south line thereof on the Red River. That it also "operated and now operates The Chicago, Rock Island & Gulf Railway Company, a corporation duly and legally incorporated and organized under the laws of the State of Texas, in connection with said Rock Island Company, which Chicago, Rock Island & Gulf extends from said Red River through various counties in the State of Texas to the City of Ft. Worth, in Tarrant County, Texas; that said lines of railway connect with each other at Red River and form a continuous line of railway from Chicago to the City of Ft. Worth."

It is further stated in the petition that the Rock Island Company and The Chicago, Rock Island & Gulf Railway Company, hereinafter called the Gulf Company, are engaged in operating said lines of railway as a single system and as a single line, known and advertised by them as the "Rock Island System"; that while said companies were separately incorporated, they are in fact substantially one company, owned and operated by said companies as parts of the same system; that in operating said lines said companies are acting together as partners and agents of each other; that the Rock Island Company is the dominant and

parent company or corporation; that the Gulf Company is a subordinate and ancillary corporation, organized and incorporated by and at the instance of the Rock Island Company, as a joint agency through which to enable it to extend and operate its line of railway into the City of Ft. Worth; that the Gulf Company is completely dominated and controlled by the Rock Island Company; that the Rock Island Company transacts its business in Texas through and from the general offices, and through and by the general officers and local agents of the Gulf Company. That while the officers and local agents of the Gulf Company are employed ostensibly by it, they are in reality acting for the Rock Island Company and for that system. That the Rock Island Company is thus engaged in doing business in the State of Texas and has offices and local agents in the State. That S. B. Hovey, who resides in Tarrant County, Texas, is Vice-President and General Manager of the Gulf Company, and is also General Manager and Local Agent in Texas of said Rock Island Company; that F. E. Merrell, who resides in Fort Worth, Texas, is the Local Agent in that county for both companies, and for said system; that the First Division of said system going north extends from Ft. Worth to the City of Chickasha, Indian Territory, and that M. E. Sebree, who resides, and has his office, in Tarrant County, Texas, is the Trainmaster of said division, and is a Local Agent in Texas for said defendant.

On the day on which the petition was filed citations

were issued requiring the marshal to summon S. B. Hovey, Vice-President and General Manager of the Gulf Company, and General Manager and Local Agent of the Rock Island Company, F. E. Merrell, Local Agent in Tarrant County, Texas, for the Rock Island Company and the Gulf Company, and M. E. Sebree, Trainmaster of the First Division of the Gulf Company and the Rock Island Company, and Local Agent in Texas. In these citations it was represented that the Rock Island Company and the Gulf Company, while separately incorporated, are substantially one company, and owned and operated as one company, as shown in plaintiffs' petition.

These citations having been returned duly served, the Rock Island Company, appearing specially for that purpose, moved to quash the service on the ground that none of the persons named in the summons was at the time of such service either the President, Vice-President, Secretary or Treasurer, or the General Manager or Local Agent of said defendant, and that the Rock Island Company was a foreign corporation and not incorporated under the laws of the State of Texas.

This motion to quash was supported by the affidavit of S. B. Hovey, to the effect that he was not at the time of the service, or at any other time, either the General Manager or Local Agent, or the President, Vice-President, Secretary or Treasurer of the Rock Island Company; by the affidavit of F. E. Merrell, to the effect that he was not the Local Agent, nor any character of agent

of the Rock Island Company, and the affidavit of M. E. Sebree that he was not President, Secretary, Treasurer or General Manager, or the Local Agent within the State of Texas of the Rock Island Company.

At the time of the filing of the petition and the service of summons upon said parties as hereinbefore stated, the following statutes were in force in the State of Texas, providing where and how suits might be brought against foreign corporations and citations served thereon:

References are to Sayles' Texas Civil Statutes.

Art. 1194, Sec. 25. *Foreign, private or public corporations, etc.* Foreign, private or public corporations, joint stock companies or associations, not incorporated by the laws of this state, and doing business within this state, may be sued in any court within this state having jurisdiction over the subject matter, in any county where the cause of action or a part thereof accrued, or in any county where such company may have an agency or representative, or in the county in which the principal office of such company may be situated; or when the defendant corporation has no agent or representative in the state, then in the county where the plaintiffs or either of them reside.

Art. 1223. Foreign corporations, how served.

In any suit against a foreign, private or public corporation, joint stock company or association or acting corporation or association, citation or other process may be served on the president, vice-president, secretary or treasurer, or general manager, or upon any local agent within this state, of such corporation, joint stock company or association, or acting corporation or association.

By sections 2 and 3 of an act of the Legislature of Texas, approved March 13th, 1905, General Laws of Texas, 1905, page 30, an additional method of serving citation upon foreign corporations was provided. Said sections are as follows:

SEC. 2. That service may be had on foreign corporations having agents in this state in addition to the means now provided by law by serving citation upon any train conductor who is engaged in handling trains for two or more railway corporations, whether said railroad corporations are foreign or domestic corporations, if said conductor handles trains over foreign or domestic corporations' track across the state line of Texas, and on the track of a domestic railway corporation within the state of Texas, or upon any agent who has an office in Texas, and who sells tickets or makes contracts for the transportation of passengers or property over any line of railway or part thereof, or steamship or steamboat of any such foreign corporation or company.

SEC. 3. For the purpose of obtaining service of citation on foreign railway corporations, conductors who are engaged in handling trains and agents engaged in the sale of tickets or the making of contracts for the transportation of property as described in Sec. 2 of this act, are hereby designated as agents of said foreign corporations or companies upon whom citation may be served.

On October 4th, 1905, plaintiffs caused an additional summons to be issued against the Rock Island Company, requiring the marshal to summons it by serving A. L. Thomas and V. N. Turpin. It was represented in the summons that Thomas was a conductor, and Turpin a ticket agent, and that both were agents and rep-

resentatives of the Rock Island Company, and resident citizens of Tarrant County, and that the Rock Island and Gulf Companies, while separately incorporated, are substantially one company, and owned and operated as one company, as shown by the plaintiffs' original petition. After the service of this summons, the Rock Island Company, appearing specially for that purpose, moved to quash the service, it being agreed by counsel that the two motions might be considered as an amended motion; and as ground for such motion, it was alleged that said V. N. Turpin was not at the time of the service of the citation, nor at any other time since the institution of the suit, an agent or employe of any kind or character of the Rock Island Company, and that said A. L. Thomas was not at the time of service of the citation, nor at any other time since the filing of the suit, an agent or employe of any kind of the Rock Island Company in Texas. It was further alleged in the motion that the service of citation upon these two parties was an attempt to obtain service on the Rock Island Company under the provisions of said Act of 1905, and that said statute is insufficient to sustain a personal judgment, in that it is not personal service on the defendant, as it provides for service of citation on persons not employed by the defendant, and who are not in fact agents of the defendant.

This motion was supported by the affidavit of A. L. Thomas, to the effect that he was not at the time of the service of citation on him, and had not at any time

since the institution of this suit been an agent or employe of The Chicago, Rock Island and Pacific Railway Company, further than that he had been for a number of years a passenger conductor residing at Ft. Worth, Texas, and running over the line of road of the Gulf Company and the Rock Island Company Between Ft. Worth and Caldwell, Kansas; that he was employed by each company while running on its line of road, and paid by each company for the service rendered it; that he ran from Ft. Worth, Texas, to the Texas state line upon the line of the Gulf Company, and from the Texas state line to Caldwell, Kansas, over the line of the Rock Island Company.

The affidavit of V. N. Turpin filed in support of said motion states that he was not at the time of the service of citation, and has not at any time since been an agent or employe of any kind or character for the Rock Island Company. Further than that he is and has been for a long time the ticket agent of the Gulf Company in Ft. Worth Texas, and that in the performance of his duties as such he has sold, and customarily sells, tickets good for passage over the line of the Gulf Company and any other connecting line which the purchaser desires to travel over, that he has thus sold tickets over The Chicago, Rock Island and Gulf, and The Chicago, Rock Island and Pacific Railway Companies' lines.

On the hearing of these motions to quash, an agreed statement of facts was submitted (Record, 22) which in substance shows that the Rock Island Company, a

corporation chartered under the laws of Illinois and Iowa in the year 1892, owned and operated a line of railway extending from the city of Chicago, Illinois, in a southwesterly direction to the north boundary line of the State of Texas. In the same year the Chicago, Rock Island and Texas Railway Company, hereinafter called the Texas Company, was organized under the laws of Texas, with an authorized capital stock of three million dollars. Seven hundred fifty-four shares of its stock were subscribed at the time of its organization. Of the corporators, six who subscribed one share each had never been connected with the Rock Island Company. One other who subscribed one share had been in the employ of the Rock Island Company in securing right of way. M. A. Low, who subscribed seven hundred forty-five shares, was one of the General Attorneys, and W. F. Evans, who subscribed one share, was Assistant General Attorney, and C. F. Jilson was Assistant Treasurer of the Rock Island Company.

Under its charter and amendment thereto the Texas Company was authorized to construct its line from the north line of Texas to Tarrant County, in which is situated the city of Fort Worth. This line at its northern terminus connected with the southern terminus of the line of the Rock Island Company at the line between Texas and the Indian Territory, which was situated in the center of Red River.

In January, 1893, the Texas Company and the Rock

Island Company entered into an agreement (Record, 31) in which it was recited that the Rock Island Company owned and operated, among other lines, a line of railway extending from the City of Chicago, Illinois, to the south line of the Chickasaw Nation, Indian Territory, where it connected with the railway of the Texas Company, and that the Texas Company owned and operated a railway from the point of connection of the railway of the Rock Island Company on the line between the State of Texas and the Indian Territory, and extending thence south into the city of Bowie, Texas, which line it proposed to extend, and that it desired to raise money to be applied to such construction by the sale of its first mortgage bonds, and that it also desired to make a permanent arrangement with the Rock Island Company for the exchange of traffic. In section two of Article 1 of this agreement it was declared to be the purpose of the parties, by the execution of the agreement, to establish and operate through lines of railway which should connect when the same could be done with reasonable directness, all points on the lines of both of the parties thereto treating all railroads with which either party shall have traffic or running arrangements, or in which it shall have any leasehold interest, as a part of the line of the party hereto with which it is so related, and to secure the operation of all said lines as to through traffic, as they should be operated if all were owned by one corporation. By Article 2 of the agreement,

the Rock Island Company agreed to purchase the bonds of the Texas Company as offered to it to an amount not exceeding fifteen thousand ($15,000) dollars per mile of railway actually constructed by the Texas Company, and also to purchase a limited number of bonds issued to pay for equipment. By section two of the same article it promised, so far as it lawfully could, to give to the Texas Company all westbound traffic which it might receive for transportation to any points which could with reasonable directness be reached over lines composed in whole or in part of portions of the railways of the parties thereto. It also agreed that it would furnish freight cars for the transportation of through traffic as nearly as practicable in the proportion of its mileage to the entire mileage over which such traffic should be moved between the point where it shall be received on the railways of the parties hereto and the points of destination or delivery to connecting carrier. By Article 3 the Texas Company agreed, so far as it lawfully could, to deliver to the Rock Island Company at the most accessible or most convenient point all eastbound traffic which could be reached with reasonable directness by a line composed in whole or in part by a portion of the railways thereto, and that it would furnish freight cars for the transportation of through traffic as nearly as practicable in the proportion of its mileage to the entire mileage over which such traffic should be moved between points on the lines of the parties to the contract.

By Article 4 the parties mutually agreed that each would construct and maintain its railway and appurtenances in such condition as would enable it to promptly and safely transport and deliver through traffic. Sec. 4 of Article 4 provided that "each party shall control the movements of traffic on its own railways, and defray all expenses which may be incurred in moving and handling the same while under its control." In the following sections provision was made for time schedules for running through passenger, freight and express trains, it being expressly provded that in making such schedules the convenience of all parties must be regarded and that either party's trains should not be so arranged as to connect with any train operated by either one of the parties on its own railway to the serious prejudice of the other party. Section 9 of this article provided that each party should furnish its proportion of the cars for the transportation of through traffic and that the party furnishing in excess of its proportion should be entitled to compensation for such excess at the rates usually allowed for car service, and that on request the Rock Island Company would furnish the Texas Company equipment for its passenger trains, receiving therefor the compensation usually allowed at the time in the State of Texas for such use. Section 10 contained the usual provision in contracts for the interchange of freight traffic, that damage to persons or property in transit over through lines should be paid by the party upon whose railway the damage shall oc-

cur when known, and when unknown, by both parties in proportion to the division of the charge for transportation thereof. Section 12 provided that each party would furnish power to move freight over its own tracks. S. B. Hovey testified (Record, 50) that this contract was cancelled by the directors of the two companies in 1903, before the property of the Texas Company was sold to the Gulf Company as hereinafter stated. And Exhibit "B" (Record, 36-37) indicates that by agreement of said companies said contract was, on the 14th day of April, 1903, cancelled, and each party thereto was fully released from every obligation contained therein.

After the Texas Company had constructed its line it issued first mortgage bonds to the extent of $15,000 per mile, and these bonds were purchased by the Rock Island Company at par. The railway of the Texas Company cost a large sum of money in excess of the amount for which it issued bonds. This additional cost was paid by application of money subscribed by stockholders and by borrowing from the Rock Island Company, which money so borrowed had long before the institution of this suit been returned with interest. (Record, 24.) In 1893 S. B. Hovey, who was served with citation in this case, was elected Vice-President of the Texas Company and continued as Vice-President and Superintendent thereof from that date until its property was sold to the Gulf Company in 1903. M. E. Sebree, who was served with a citation in this case,

was, for a number of years, and until the sale of the property of the Texas Company to the Gulf Company, Trainmaster of the Texas Company and Assistant Trainmaster of the Rock Island Company, with jurisdiction on the Rock Island line to Chickasha, Indian Territory. M. A. Low, of Topeka, Kansas, was President of the Texas Company from the time of its organization until the 8th day of November, 1900, during which time he was one of the General Attorneys of the Rock Island Company. Prior to the sale of its property, the Texas Company had never issued equipment bonds, but it had purchased between 1,000 and 1,200 freight cars of various kinds, and during that time had rented rolling stock from various companies, but principally from the Rock Island Company, and had paid therefor prices prevailing between other lines in the State of Texas. (Record, 25.)

After the Texas Company had constructed its line into Fort Worth, and after the execution of the traffic contract hereinbefore referred to, most of the passenger and freight trains running over the line of the Texas Company from Red River to Fort Worth and from Fort Worth to Red River were operated beyond its line as trains of the Rock Island Company, the employes of these trains being under the control and paid by the Texas Company while working on its line, and under control and paid by the Rock Island Company while on its line. (Record, 25.) When necessary the Texas Company operated local freight trains between

Fort Worth and Red River, but as a general rule the through service took care of the local business. It operated local freight and passenger trains between Bridgeport and Jacksboro and afterwards to Graham, from the time the branch to Graham was built until the line was sold to the Gulf Company. (Record, 25.)

On through freight trains the run made by crews was from Fort Worth to Chickasha, and on through passenger trains, from Fort Worth to Caldwell, Kansas, these crews being handled and paid by each Company for work done on its own line. (Record, 26.) It was agreed that defendant's witnesses would testify that the Texas Company paid no part of the cost of operating the Rock Island Railway, and that the Rock Island Company did not pay any part of the cost of the operation of the railway of the Texas Company, and that neither of them participated in the earnings of the other; that the relationship between the Rock Island Company and the Texas Company was fully disclosed by the terms of the contract dated Jan. 2, 1903, which was observed up to the time of its cancellation. (Record, 26.)

It was further agreed that train crews while working on the line of the Texas Company might have been discharged by the proper officer of that Company, and that while working on the line of the Rock Island Company they might have been discharged by the proper officer of that Company and that either company employed additional men when needed. (Record, 26.) At

the time the contract of Jan. 2d, 1903, was cancelled, the Texas Company was operating about 140 miles of railroad and the Rock Island Company about 3,300 miles. For some time after the Texas Company's line was built into Fort Worth it employed and maintained at its Fort Worth office a train-dispatcher who gave orders for the movement of trains over its line, but as a matter of convenience this was discontinued and the Texas Company paid a part of the salary of the train-dispatcher located at Chickasha to give orders for the movement of trains over its rails. (Record, 26.) On the 22d day of September, 1903, the railway and property of the Texas Company, under authority of a special act of the Legislature of Texas, was purchased by the Gulf Company, and since that time the Texas Company has ceased to exist as a railroad or to do business as such. (Record, 26.)

The Gulf Company now owns and controls 386 miles of railroad, all of which is located inside the State of Texas. It does not own any railroad outside the State of Texas. It had at the time of the hearing of this motion 1,600 cars, including ballast, refrigerator and cattle cars, 20 locomotives and 8 cabooses, but does not own any passenger equipment, such equipment being rented from the Rock Island Company, the Texas Company paying therefor current rentals charged by connecting lines in Texas. The train crews of through freight and passenger trains are handled in the same way that they were handled when the line into Fort

Worth was operated by the Texas Company, but the Gulf Company is now operating in many places local trains between local points in Texas. (Record, 26-27.)

Of the stock of the Gulf Company 3,850 shares are held by Wm. Wesley Johnson, a resident of the city of New York. The other stockholders, who hold one share each, are S. B. Hovey, N. H. Lassiter, J. C. McCabe, W. G. Newby and H. C. Holloway, residents of Ft. Worth, Texas; J. B. Wilson, a resident of Dallas, Texas; W. B. Leeds, B. L. Winchell and Robert Mather, residents of Chicago, Ill., and H. B. Low, a resident of El Reno, O. T. (Record, 27.)

Blank passes, properly signed by officials of different railroads, including the Rock Island Company, T. & P. Ry. Co., H. & T. C. Ry. Co., and other lines, are sometimes placed with S. B. Hovey, and when so placed he has the permisson of such lines to fill in the names of parties and countersign passes, and when so countersigned passes are recognized over lines over which they are issued. The local ticket agent of the Gulf Company sells coupon tickets good over the lines of the Rock Island Company and nearly all other lines in the United States, which tickets are duly honored by the respective railroads over which they read. (Record, 27.)

Proper officials of the Gulf Company and the Rock Island Company exchange reports with each other as to the amount of exchange business done. (Record, 28.) No dividends have ever been paid on the stock of the Texas Company or of the Gulf Company. Be-

fore it sold its property, the Texas Company put its net earnings into betterments and improvements, and the Gulf Company has done the same since it acquired the property. (Record, 28.)

In 1897 the Secretary of the Texas Company reported to the Interstate Commerce Commission that it was controlled by the Rock Island Company through the ownership of a majority of its bonds. In 1899 he reported it as controlled by the Rock Island Company through its ownership of the majority of its capital stock. (Record, 28.)

On the 2d day of August, 1894, M. E. Sebree, a resident of Fort Worth, Texas, was Trainmaster of the Gulf Company, and Assistant Trainmaster of the Rock Island Company between the north line of Texas and Chickasha, Indian Territory. He was paid by the Gulf Company for work done for it, and by the Rock Island Company for services on its line. S. B. Hovey is Vice-President and Superintendent of the Gulf Company, and it is agreed that he will testify that he is not connected with and does not perform any service for any other road. (Record, 28.) After making certain changes and additions, the Gulf Company adopted the book of rules issued by the Rock Island Company for the control and operation of its line, and such rules are now in effect. Cars and engines belonging to the Gulf Company are repaired at its shops in Fort Worth, or Dalhart, if cars and engines are convenient to these points. Otherwise the work is done at some other con-

venient place, either on or off the line of the Rock Island Company, wherever the cars or engines may be at the time the repairs are needed. (Record, 28.)

On the 2d day of August, 1904, the Gulf Company had a different President and altogether different executive officers from any of the lines referred to as included in the Rock Island System. The Gulf Company does not now and never has paid any part of the salary of any officers of the Rock Island Company nor of any of the lines named as constituting the Rock Island System. (Record, 28.) Before the Gulf Company purchased the property of the Texas Company and other Texas lines, M. E. Sebree was Trainmaster of the Texas Company and Division Trainmaster of the Rock Island Company with jurisdiction to Chickasha, Indian Territory. Since this purchase by the Gulf Company, Mr. Sebree's jurisdiction has been extended over the purchased lines, but otherwise there has been no change in his employment or his jurisdiction for the past five or ten years. (Record, 28-29.)

The Gulf Company pays a portion of the salary of the train-dispatcher located at Chickasha, I. T., but in giving orders for the handling of trains on the line of the Gulf Company this dispatcher is subject to the control, direction and supervision of the executive officers of the Gulf Company as if exclusively employed by it. (Record, 29.)

The rails of the Gulf Company and the Rock Island Company connect on the north line of the State of

Texas near the middle of the Red River, on a bridge. At this particular point there is no town, station or turn out, and the trains going in either direction do not stop at that point. It was not possible to build a town or station at the exact point of connection. (Record, 29.)

But, the Gulf Company operates under a lease that part of the line of the Rock Island Company which begins at the north boundary line of the State of Texas extending north to the town of Terral, Indian Territory, a distance of about one and one-sixth miles. (Record, 27.)

On the hearing a further agreement was submitted (Record, 29-30) showing that A. L. Thomas, on whom process was served herein as conductor and agent of the defendant, was at the date of said service and had been for many years a conductor running on and handling passenger trains of the Rock Island Company, the Texas Company and, later, of the Gulf Company, running between Fort Worth, Texas, and Caldwell, Kansas, and that he was carried on the pay-roll of the Rock Island Company and paid for services rendered while on the line of that Company north of the Texas state line, and on the pay-roll of the Gulf Company and paid by that Company for services rendered on its line south of the Texas state line; and, that V. N. Turpin, on whom process was served herein as ticket agent of the Rock Island Company, was at the date of such service and had been for a long time ticket agent of the Gulf

Company at Fort Worth, engaged in selling tickets for said Gulf Company over its line and also over the lines of the Rock Island Company and all its connections, and that said Turpin is carried on the pay-roll of the Gulf Company and not on that of the Rock Island Company, and that he is not agent for the Rock Island Company unless the above facts make him one. (Record, 30.)

Plaintiffs then introduced in evidence the Twenty-fourth Annual Report of the Rock Island Company, which contains the following clause:

"The Board of Directors submit their report of the operations and affairs of the Chicago, Rock Island & Pacific Railway Company for the fiscal year ended June 30th, 1904. They have included therein, operations and affairs of the operated lines and auxiliary companies forming the "Rock Island System." In order to make exhibits comparative, the figures for the last preceding year have been re-stated to meet changed conditions due to the including in this report the operation of the auxiliary companies. These lines thus forming the Rock Island System are the following:

MILEAGE OPERATED.

The Chicago, Rock Island & Pac. Railway....6,760.74
The Chicago, Rock Island & El Paso Railway. 111.50
The Chicago, Rock Island & Gulf Railway.... 386.92."

(Record, 37.)

Under the head of "Expenditures for Construction of Extensions and Completion of System Lines," expenditures on the following lines were included:

Fort Worth, Tex., to Dallas, Texas;

Yarnall, Tex., to Amarillo, Tex.;

Jacksboro, Tex., to Graham, Tex.;
Red River to Fort Worth, Tex.;
Texhoma (Texas state line) to Bravo, Tex.;
Texola (Texas state line) to Yarnall, Tex.
(Record, 38.)

This report further shows that certain expenditures made on account of construction and purchase of equipment, theretofore stated in system assets as advances for construction and equipment, have been transferred to property account, the property represented by such amounts having been deeded to the Rock Island Company or to the Gulf Company, and that there has also been transferred to this account expenditures made prior to July, 1903, for the purchase of shares of the capital stock of certain railway companies, including the bonds of the Texas Company, appearing in prior reports as "Stocks and Bonds of Constituent Companies." (Record, 38.) Respecting the extension from Fort Worth to Dallas, Texas, it is said: "This line was completed and the line opened for operation by the Chicago, Rock Island & Gulf Railway Co. Dec. 1st, 1903. It is 33.26 miles in length, connecting with the line of the former, The Chicago, Rock Island & Texas Railway Company at Fort Worth, Tex., and extending to Dallas, where, by agreement with the Gulf, Colorado & Santa Fe Railway Company, it has the joint use of the latter Company's terminal facilities. The opening of this line gives the Gulf Company direct entrance into Dallas, enabling it to compete for the traffic of that

important commercial center." (Record, 39.) Under the head of "Consolidation of Texas Lines," this report shows that the Gulf Company, on Dec. 1st, 1903, purchased the railroads and properties of the Texas Company and certain other Texas lines, thereby permitting the consolidated properties to be operated by one management instead of four separate sets of officials, as had theretofore been required. This report includes the following paragraph:

"In stating the assets and liabilities of the Companies forming the System, the holdings of the Chicago, Rock Island & Pacific Railway in the bonds and capital stock of auxiliary lines, together with loans between system companies, have been eliminated from the liabilities and a like reduction made in the value of the assets; the figures as stated, therefore, represent the value of the assets and the real liability without duplication."

Plaintiffs also introduced in evidence the Second Annual report of the Board of Directors to the Stockholders of the Rock Island Company of New Jersey for the year ending June 30th, 1904. In this report it was stated that the Chicago, Rock Island & Pacific and the St. Louis and San Francisco Railroad Company each operates independently its lines of railway, and that each is interested through the ownership directly or indirectly of at least a majority of the capital stock of certain subsidiary companies, each of which operates its property independently, and the Chicago, Rock Island & Gulf Railway Company is named as one of these subsidiary companies which comprised what

is known as the Rock Island System. (Record, 40.)

Plaintiffs also introduced in evidence a railroad folder dated July 10th, 1904, upon the back of which was printed "Rock Island System. Time Table," and in which appeared among others the name of the Chicago, Rock Island & Gulf Railway Company, together with a list of the names and residences of passenger, freight and traveling agents of such roads respectively, and showing the schedule of passenger service of all said lines; and on the inside of the folder were traced in heavy black lines the line of the Rock Island Company, the Chicago, Rock Island & El Paso Railway and the Gulf Company, so connecting as to show them as belonging to the same system, and below said map was printed "The Rock Island States of America." (Record, 41.) This is the folder referred to by Mr. Hovey in his testimony, in which he stated that the words "Rock Island System" were a kind of a trade-mark. (Record, 49-50.)

Mr. Hovey testified that the Rock Island and Gulf Companies each had separate car service agents. The car service agent of one line had no jurisdiction over cars of the other company; that the Gulf Company ran local freight trains daily between Fort Worth and its northern terminus. He also testified that the lines mentioned on the Rock Island folder as composing the Rock Island System were not operated as one road, but were operated separately, and that their revenue was divided up just as revenues of the Gulf and T. &

P. would be divided; that no reports were made by the Gulf Company to the head of the traffic department of the Rock Island Company; that reports were made by the Gulf Company to the President of the Gulf Company; that no representative of the Rock Island Company was sent or came to examine the books of the Gulf Company any further than as a representative of any other connecting line would occasionally check up business with the Gulf Company; that its books had never been audited from the Chicago office. (Record, 50.) He also testified on cross-examination that there was no contract between the Gulf Company and the Rock Island Company except a traffic agreement as to the division of rates made between the General Freight Agent of each line, of the same character as contracts that exist between the Gulf Company and any other line which interchanges business with it; that the Gulf Company owned about fifteen or sixteen hundred freight and cattle cars and about twenty engines which are marked "C. R. I. & G." (Record, 50.) That since he had been Vice President of the Gulf Company he had no connection whatever with the Rock Island Company and had no duties to perform with any other railroad than the Gulf Company; that the Rock Island Company pays no part of the salary of the general officers of the Gulf Company; that trainmen who run over the lines of both companies are paid by each company for services rendered on its line, each company

paying the men while on its rails and not paying them when they are on the rails of the other company; that neither company pays any part of the expense of the men when working on the line of the other company; that for traffic hauled over the two lines the Gulf Company receives the amount of the division agreed upon by the General Freight Agents in the same way and to the same extent that it receives divisions of earnings on freight transported in connection with the T. & P., and that neither road pays any part of the expense of moving freight over the lines of the other company, nor pays any part of the loss sustained while in the hands of the other company by damage to freight; that the Gulf Company had on deposit with the Rock Island Company several hundred thousand dollars for which it received six per cent interest; that the Gulf Company checks on this fund whenever money is needed; that this rate of interest is larger than can be obtained from any local bank. (Record, 51.)

F. E. Mitchell testified that he was Secretary of the Gulf Company; that the Board of Directors of the Gulf Company were Mr. Hovey, Mr. Lassiter, Mr. Winchell, who was President of the Gulf and Rock Island Companies, Mr. Newby and Mr. Holloway, and there were two other directors whose names he did not remember. That as Secretary and Treasurer of the Gulf Company he made no report to the General Passenger Agent of the Rock Island Company. That nobody but the Auditor at Fort Worth audits the books of the Gulf Com-

pany, and that no one came down there to him for any information.

After considering the testimony the Court sustained the motion to quash the service of citation, and dismissed the suit for want of jurisdiction.

Argument.

Two questions are presented by the record in this case: First, Was the Rock Island Company, at the times when the citations were served, doing business in the State of Texas, within the meaning of the rule which permits a foreign corporation doing business in a State to be summoned in a suit pending in that State? Second, If it was so doing business in Texas, were the citations, or either of them, served upon a person authorized to accept service in its behalf?

I.

1. A foreign corporation can only do business in a State with its consent expressed or implied. The laws of Texas give no such express consent to a foreign railway company and none can be implied, either from its laws or its action with respect to such corporations. It does not authorize a foreign railway company to own, lease or operate a railway within the State. There is nothing in the record to show that the Rock Island Company was doing business in Texas with the consent of the State.

The Lafayette Ins. Co. v. French, 18 How. 404;

St. Clair v. Cox, 106 U. S. 350;

Barrow Steamship Company v. Kane, 170 U. S. 100.

2. The evidence offered on the hearing of the motions to quash the service of citations was not sufficient to show that the Rock Island Company was doing business in Texas. As a matter of law, it could not own, lease or operate the railway of the Gulf Company; nor could these companies consolidate. On the facts stated in the petition the Court will take judicial notice that each company was a separate and independent corporation, created under the laws of different States, and that they could not be one company, substantially or otherwise, because they had no power to so unite.

The fact that the Rock Island Company loaned money to the Texas Company to assist it in constructing or extending its railway, that it owned all or any part of the capital stock of the Gulf Company, and that it exercised such authority in the selection of directors of the company as a stockholder lawfully may, does not tend to show that it was doing business in Texas.

United States v. American Bell Telephone Co., 29 Fed. 17;

Pullman Car Co. v. Missouri Pacific Co., 115 U. S. 587, 596;

Potter v. Pittsburg Bessemer Steel Co., 120 U. S. 649;

Pennsylvania Railroad Co. v. Jones, 155 U. S. 333, 344;

Earle v. Chesapeake & O. Ry. Co., 127 Fed. 235;

Central Grain & Stock Exch. v. Board of Trade, 125 Fed. 463;

St. Louis & Southwestern R. Co. v. Gate City Co-operative Co., 70 Ark. 10;

St. Louis & Southwestern R. Co. v. Smith, 71 Ark. 290;

Conley v. Mathieson Alkali Works, 190 U. S. 406.

The stock of a Texas railway corporation is personal property, and when lawfully issued may be purchased and held by any corporation having power to do so. Article 4394, Sayles' Texas Civil Statutes, is as follows:

"Art. 4394. Railroad Stock is personal estate and transferable.

The stock of a railroad corporation shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of the corporation; but no such transfer shall be valid until the same shall have been made on the stock and transfer books of the company; nor shall any shares be transferable until all previous calls thereon shall have been paid."

The following statute of the State of Illinois authorizes the Rock Island Company to hold two-thirds or more of the stock of the Gulf Company:

"14. Capital stock to be personalty—Transfer—Use of funds—Railroad may hold stock of connecting lines in other States. Section 14. The stock of such corporation shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of such corporation. But no shares shall be transferable until all previous calls thereon shall have been paid; and it shall not be lawful for such corporation

to use any of the funds thereof in the purchase of its own stock, or that of any other corporation, or to loan any of its funds to any director or other officer thereof, or to permit them or any of them to use the same for other than the legitimate purposes of such corporation. Provided, however, that any railroad company incorporated and organized or that may hereafter be incorporated and organized under any general or special law of this State, and operating a railroad which now connects or hereafter may connect at any point with any railroad of any other State, shall have power, acting by itself, or jointly with another company or companies, to own and hold the stock and securities of the corporation owning said connecting road, or any part thereof; such ownership or holding to comprise at least two-thirds in amount of the stock of such corporation; but in case of the purchase of stock the company or companies so purchasing shall take and pay for all the shares of the company whose stock is so purchased that may be offered, and the terms of purchase of all shares shall be the same to all stockholders."

[Starr and Curtiss' Annotated Illinois Statutes, Vol. 3, p. 3229.]

It is charged with much vehemence and reiteration that the Gulf Company is completely dominated and controlled by the Rock Island Company, and that it is the partner and agent in Texas of the Rock Island Company, but the evidence does not sustain these charges. There is nowhere any showing that the Rock Island Company has asserted or exercised any control over the affairs of the Gulf Company that a stockholder may not lawfully and properly exercise.

The affairs of the Gulf Company are managed by its own officers without any apparent interference by of-

ficers of the Rock Island Company. The traffic relations of the two companies are not shown to be greatly different from those sustained by the Gulf Company with other companies. The physical conditions growing out of the connections of the two lines at the Texas state line compel each to give much of its business into and out of the State to the other. Each is manifestly interested in promoting such business, but each handles it independently on its own line, at its own expense, and receives its agreed division of the through rate. An agreement for the interchange of business and the division of the through rate over a through route, each company undertaking to act independently on its own line, does not make the contracting companies partners; nor does it create a partnership agency.

United States v. American Bell Telephone Co., 29 Fed. 37;

Insurance Co. v. Railroad Co., 104 U. S. 146;

Pennsylvania Railroad Co. v. Jones, 155 U. S. 333, 344, 345.

The fact that the Gulf Company was reported and advertised as a part of the "Rock Island System" did not show that the Rock Island Company was, through the agency of the Gulf Company, doing business in Texas, the evidence showing that each member of the system managed its own affairs through its own officers, paid its own expenses and retained its own earnings.

Kingsley v. The Great Northern R. Co., 91 Wis. 380;

Pennsylvania Railroad Co. v. Jones, 155 U. S. 333, 341, 345;

White Star Line v. Star Line, 141 Mich. 604.

II.

None of the citations issued in this case was legally served, and on the facts in evidence, the Court did not err in sustaining the motion to quash.

To the validity of service of process upon a foreign corporation it is necessary that the corporation be at the time actually and substantially doing business in the State, and that the service be made upon an agent representing the corporation with respect to the business carried on in the State, in such a capacity that, in the absence of express authority, acquiescence in the exercise of such authority ought to be clearly implied. The agent upon whom service is made must sustain such a representative relation to the business transacted by the corporation in the State as to charge him with the duty of accepting service.

Story on Agency, Sec. 140;

St. Clair v. Cox, 106 U. S. 350, 357;

Fitzgerald Const. Co. v. Fitzgerald, 137 U. S. 98-106;

Mexican Central Ry. v. Pinkney, 149 U.S. 194;

Goldey v. Morning News, 156 U. S. 518, 521, 522;

United States v. American Bell Telephone Co., 29 Fed. 17;

Mutual Life Ins. Co. v. Spratley, 172 U. S. 602, 617, 619;

Earle v. Chesapeake & O. Ry. Co., 127 Fed. 235, 240;

Conley v. Mathieson Alkali Works, 190 U. S. 406;

Central Grain & Stock Exchange v. Board of Trade, 125 Fed. 463;

N. K. Fairbanks & Co. v. Cincinnati N. O. & T. P. Ry. Co., 54 Fed. 420, 423;

Strain v. Chicago Portrait Co., 126 Fed. 831, 833, 834;

Frawley v. Pennsylvania Casualty Co., 124 Fed. 259;

Union Pacific R. Co. v. Miller, 87 Ill. 45.

Service upon one partner or joint obligor will not confer jurisdiction to render a personal judgment against another partner or joint obligor.

D'Arcy v. Ketchum, 11 How. 165;

Goldey v. Morning News, 156 U. S. 521;

In re Grossmayer, 177 U. S. 48;

Kingsley v. Great Northern R. Co., 91 Wis. 380.

III.

The Legislature and the courts of Texas have gone to great length in reaching out for jurisdiction over foreign corporations and non-residents. An extreme case is that of *Buie v. The Chicago, Rock Island and*

Pacific Railway Company, et al., 95 Tex. 51. Buie was injured at Clio, Iowa, by reason of a collision between two parts of a freight train on which he was being carried as a passenger to look after certain cattle shipped from Ryan, Indian Territory, to Chicago, Illinois, over the Chicago, Rock Island and Pacific Railway. He brought suit in the District Court of Montague County, Texas, against the Rock Island Company and The Chicago, Rock Island and Texas Railway Company, to recover damages for his injuries. The citation was served upon S. B. Hovey, as Vice-President, Acting President, General Superintendent and General Manager of both companies, and upon J. D. Gilfillan, as Local Agent thereof at Bowie, in Montague County. Affidavits were filed by the parties served, denying that they were officers or agents of the Rock Island Company. The District Court on hearing the testimony dismissed the suit against the Rock Island Company, and instructed the jury to return a verdict in favor of the Texas Company. The Court of Civil Appeals affirmed this judgment, but certified the case to the Supreme Court; that Court holding the service good and that b[illegible] companies were liable for the damages claimed, reversed the judgment and remanded the case for trial. A verdict was finally obtained against both companies, which on appeal [was affirmed by the Court of Civil Appeals, Texas Civil Appeals Reports, 654.

The decision of the Supreme Court was based on its finding that on the facts the Texas Company was a

mere agency of the Rock Island Company, and that the Rock Island Company was doing business in Texas by and through the persons who purported to represent the Texas Company for the exchange of through business, and upon the fact that the Rock Island Company owned a majority of the stock of the Texas Company and had loaned it money to be used in the construction of its line.

In support of its position the Supreme Court of Texas cited the following cases:

St. Clair v. Cox, 106 U. S. 350, brought in the Circuit Court of the United States for the Eastern District of Michigan, and in which, among other defenses, the defendant pleaded a judgment against a foreign corporation obtained in a Michigan court. The return of the officer in the suit in the State court recited that he had served a copy of the writ, with copy of an inventory of the property attached, on the defendant, "by delivering the same to Henry J. Coldwell, Esq., Agent of the said Winthrop Mining Company, personally, in said county." This Court held the service insufficient to sustain personal judgment against the Winthrop Mining Company. It said that there was no evidence in the case to show that the Winthrop Mining Company was engaged in business in the State when the service was made on Coldwell; that it did not appear even *prima facie* that Coldwell stood in any such representative character to the company as would justify the service of a copy of the writ on him.

It was said in the opinion that "a corporation of one State cannot do business in another State without the latter's consent, express or implied, and that consent may be accompanied with such conditions as it may think proper to impose," and that, "such condition must not, however, encroach upon the principle of natural justice which requires notice of the suit and object before he can be bound by it. It must be reasonable, and the service provided for should be only upon such agents as may be properly deemed representative of the foreign corporation. The decision of this Court in *Lafayette Insurance Co. v. French,* to which we have already referred, sustains these views."

The Court further said: "We do not, however, understand the laws as authorizing the service of a copy of a writ as a summons upon an agent of a foreign corporation, unless the corporation be engaged in business in the State, and the agent be appointed to act there. We so construe the words 'agent of such corporation within the State.' They do not sanction service upon an officer or agent of a corporation who resides in another State, and is only casually in the State, and not charged with any business of the corporation there." The Court said further, that when the record of a foreign judgment is offered in evidence showing *prima facie* that the defendant was served through an agent, the defendant could show "that the agent stood in no representative character to the company and that his duties were limited to those of a subordinate employe

or to a particular transaction or that his agency had ceased when the matter in suit arose."

Hatcher v. United States Leasing Co., 75 Fed. 368, was an action to foreclose a mechanics' lien on certain mines owned by one of the defendants and leased by it to the other defendant. No question of jurisdiction was involved. The Court held on the facts of the case that the property was subject to a lien for improvements made upon it by the lessee company, the relations between the two companies being such as to make it inequitable to permit the company owning the property to retain the improvements without paying for them.

Lehigh Mining and Mfg. Co. v. Kelly, 160 U. S. 327, was a case where a corporation of one State attempted to transfer its property to a corporation organized in another State for the purpose of conferring jurisdiction upon a Federal Court, it being expressly admitted "that the parties in organizing said Lehigh Mining and Manufacturing Co., and in making to it said conveyance, was to give to this Court jurisdiction in this case." The Circuit Court dismissed the action for want of jurisdiction. The Supreme Court affirmed the judgment on the ground that the property in controversy had been collusively transferred for the purpose only of bringing suit in the Federal Court.

Penn. R. Co. v. Anoka Nat. Bank, 108 Fed. 482, was an action to recover damages for freight alleged to have been lost by the defendant. The freight was delivered to a carrier in Minnesota for transportation to

Frederick, Md. It was lost while in possession of the last carrier, the Philadelphia, Wilmington & Baltimore Railroad Company. There was testimony to show that while this company was an independent corporation, its line was actually operated by the defendant, the Pennsylvania Railroad Company, and that the Pennsylvania Company was in possession of the property at the time it was lost. In affirming the judgment the Court said that there was evidence from which a jury might rightfully infer that the railroad in question was actually operated by the Pennsylvania Company, and that "the defendant company, of course, knew exactly the relation it sustained to the Philadelphia, Wilmington & Baltimore Co., and if it was not such as the mass of testimony introduced by the plaintiff strongly tended to show it to be, it was open to it to produce convincing evidence of the fact and show precisely what the relation was; and, not having done so, every inference warranted by the evidence may justly be indulged against it."

Reference was made to *Railroad Co. v. Howard*, 178 U. S. 153, where a passenger traveling on a through ticket sold by the defendant, the C. & O. R. Co., was injured, the defense being that the train upon which the accident happened was at the time being managed by a Connecticut company to which the road had been leased. On the trial the Court charged that it was not enough to render the defendant liable or justify them in holding that it was operating the road to find that it sold

tickets over it; that it must appear from all the evidence, not only that the defendant sold the ticket over that road upon the faith of which the passenger was riding at the time, but that in order to hold the defendant liable they must find that the C. & O. Co., as a corporation, by its officers and agents, was operating the road; that that corporation controlled the road, operated it, ran it, and that the trains which ran over it were its trains; that they were manned by its employes and controlled by its officers and agents, and that unless they find these facts they must find for the defendant upon that point. The Supreme Court held that this charge was substantially correct, suggesting, however, that it was not necessary to make it liable that it should have had complete control and management of the road; that "if it had the control and management of that train it would have been sufficient, even though the Kentucky or the Connecticut Co. managed and controlled other and local trains over the road of the Kentucky Co."

Norton v. A. T. & S. F. R. Co., 61 Fed. 618, was an action to recover the value of certain horses shipped from Hiawatha, Kansas, to be transported to Escondido, California, and which were alleged to have been killed in transit by reason of the negligence of the defendant. Action was commenced in the State Court in California. Process was served on K. H. Wade, recited in the service to be General Manager of the defendant. The defendant not appearing, judgment was rendered against it by default. Thereupon the defend-

ant moved to set aside the judgment on the ground that the service was not had upon its managing or business agent as required by the California code. The defendant introduced testimony showing that the person upon whom service was made was not its agent, but the agent of a connecting line which was operated as a distinct corporation. Evidence was introduced showing advertising of the "Santa Fe Route," to some of which the name of "K. H. Wade, General Manager," was appended, and that the defendant was the owner of a majority of the stock of the Southern California Railway Company, of which Wade was General Manager. The defendant introduced testimony showing that the appellation "Santa Fe Route" did not designate either of the corporations operating the through line, but that it was simply a term used designating a particular line of travel composed of connecting railroads. The motion to set aside the judgment was sustained. This judgment on appeal was affirmed by the Supreme Court Commissioners. This decision was afterwards affirmed by the Court *en banc*, 32 Pac. Rep. 452. Afterwards the suit was renewed in the Superior Court of San Diego County, Calif., and was removed by the defendant into the Circuit Court of the United States, where the defendant moved to quash the service of summons. In the return of service Wade was designated as "Managing and Business Agent of said defendant." In overruling the motion to quash, the Court said: "The evidence further shows that the defendant

sends its own trains through from Chicago to Southern California points in charge of its own employes, along the lines of road of the Atchison, Topeka & Santa Fe Company, the Atlantic & Pacific Company and the Southern California Railway Company, and over the same route through trains are sent from Southern California points to Chicago. It shows further that the General Passenger and Freight Agents of the Southern California Railway Company, together with other assistants, subject to the supervision and control of Mr. Wade, solicit and handle the traffic for the Santa Fe Route in Southern California; and, as that route undeniably includes the defendant company, it seems to me little less than absurd to say that the defendant does not do business in Southern California; and if it does transact business here, how else does it conduct it than through those agents who solicit and handle the traffic, all of whom, according to the testimony of Mr. Hines, are subject to the management of Mr. Wade."

In one of the advertisements offered for evidence it was stated that "the California line of the Santa Fe is composed of the following roads," and among the roads named was "The Southern California Railway Company."

Interstate Tel. Co. v. Baltimore & O. Tel. Co. of Baltimore County, et al., 51 Fed. 49, was a creditors' bill filled by the Interstate Tel. Co. against the Baltimore & O. Tel. Co. of Baltimore County and the Baltimore & O. Railroad Co. to obtain payment of a judgment

against the defendant Telegraph Company which it had recovered on the law side of the court, and upon which execution had been returned *nulla bona*. It appeared from the testimony and the admissions of the pleadings that the Railroad Company, being engaged in the construction of a system of telegraph along its railroad for railroad purposes, caused the B. & O. Tel. Co. to be organized; that all of the stock of the B. & O. Tel. Co. belonged to the Railroad Company, and that its corporators and officers were employes of the Railroad Company and appointed by it. Afterwards the Railroad Company transferred its entire telegraph system, including that constructed in the name of the B. & O. Tel. Co., to the Western Union Telegraph Co., thereby rendering the B. & O. Tel. Co. insolvent, being left without any property or assets of any value. The bill asked that the Railroad Company be decreed to hold the funds arising from the sale of the property of the B. & O. Tel. Co. in trust for all the creditors of said company who became such by virtue of contracts made prior to such sale, and that a receiver for the Telegraph Company be appointed. The Court held that whether the Railroad Company and the Telegraph Company of Baltimore County are to be considered in this litigation principal and agent, or the Railroad Company as the sole stockholder of a corporation of which it was also creditor, it would be inequitable for it on the facts disclosed to deprive the plaintiff of the payment of his claim. The Court did not hold that the judgment against the Tele-

graph Company of Baltimore County would have settled the rights of a complainant against the Railroad Company if it had not appeared in that case. The Court said: "The judgment against the Telegraph Company might be held not to settle the rights of the complainant against the Railroad Company if the Railroad Company had not intervened or participated in any way in the defense of the action in which the judgment was obtained; but that defense is not raised by the answer and quite possibly could not be made." There was no controversy as to the amount which the plaintiff was entitled to recover if the Railway Company was liable for the debt.

Montgomery v. Forbes, 148 Mass. 249: It was held that a buyer of goods for his sole benefit purchased goods in the name of a corporation in good faith, or organized by him and having no real existence, and gives in payment therefor a promissory note in the name of the corporation, the seller may treat the note as void and recover against the buyer personally on the original contract for goods sold and delivered. The Court said: "This is not a case where there has been a defective organization of a corporation which has a legal existence under valid charter. Here there was no corporation. It was just the same as if the defendant had done nothing at all in the way of establishing the corporation, but had conducted his business under the names of the Forbes Woolen Mills, calling it a corpora-

tion. The business was his personal business which he transacted under this name."

Day v. Postal Telegraph Company, 66 Md. 365, was a creditor's bill against certain insolvent corporations. A telegraph company organized under the laws of New York and operating a telegraph system extending over a number of States, caused a corporation to be organized in Maryland for the purpose of constructing and operating telegraphs in that State. The stock of the Maryland Company amounted to only Five Hundred Dollars. The New York Company supplied the funds for the construction of the Maryland lines and took entire charge of them, managing them without intervention of the directors of the Maryland Company, receiving and appropriating all the revenues derived from the operation of the Maryland lines as its own property and not keeping any account with the Maryland Company. The New York Company becoming insolvent, it was held that the property of the Maryland Company should be sold and applied to the payment of the debts of the New York Company.

None of the cases cited in the Buie case, *supra*, is authority for holding that jurisdiction of a foreign corporation may be obtained by serving process on a state corporation with, or through which, it does business, or in which it is interested as stockholder or otherwise. In *Norton v. A. T. & S. F. R. Co., supra*, service was made upon Wade as the business manager, not of the Southern California Ry. Co., but of the defendant com-

pany, and it was upheld upon the theory that the evidence showed that the Santa Fe Company was itself by and through its own agents and employes directly managing and operating trains and doing business in the State of California, and that Wade was one of its agents and employes. The service upon him was not held valid because he was general manager of the Southern California Ry. Co., but because he was business manager for the Santa Fe Co.

In the case at bar there was no evidence that the Rock Island Company, through its officers and agents, managed or controlled the operation of the railway of the Gulf Company. The testimony is clear that the Gulf Company operated, managed and controlled its own property through its own board of directors, and officers and employes appointed by them. Each paid the expenses of operation and maintenance of its own line and each received and appropriated its own earnings, and earnings on through business were divided under an agreement between the general freight agents of the two companies on the same basis as divisions were made with other connecting lines. Vice-President Hovey, of the Gulf Company, testified that after his appointment as Vice-President he had no official connection with the Rock Island Company and no jurisdiction over any of its affairs; that his duties were confined solely to the management of the affairs of the Gulf Company. (Record, 50-51.) The affidavit of F. E. Merrill (Record, 13) shows that he was not at the

time of service of said citation, nor at the time of the happening of the action involved in said suit, nor at any other time, Local Agent or any character of agent for the Rock Island Company, and there is nothing in the record to show that he had at any time ever transacted any business in Texas for the Rock Island Company. The affidavit of M. E. Sebree shows that he was not at the time of service and never had been President, Vice-President, Secretary, Treasurer or General Manager or the Local Agent in Texas of the Rock Island Company. (Record, 14.) In the agreed statement of facts (Record, 25) it is stated that Sebree "was for a number of years, and until the date of sale, Trainmaster of the Chicago, Rock Island and Texas Company, and Assistant Trainmaster of the Chicago, Rock Island and Pacific Company, with jurisdiction of that part of the line up to Chickasha; prior to the time that he was employed by the Chicago, Rock Island and Texas Company he had been in the employ of the Rock Island Company as a brakeman, conductor, etc." It is shown further in the agreed statement (Record, 28) that Sebree was paid by the Gulf Company for work done for it and by the Rock Island Company for the work done for it. In other words, he performed the duties of Trainmaster for the Rock Island Company on its line in the Indian Territory south of Chickasha and was paid by it, and performed like service for the Gulf Company on its lines in Texas and was paid for such service by the Gulf Company. He did not in any way

represent the Rock Island Company with respect to any business transacted by it in the State of Texas, and was not, therefore, the Local Agent of that company for the transaction of any of its business in Texas. He was only a subordinate employe, and sustained no such relation to either company as justified, either under the statutes of Texas or otherwise, the service of summons upon him. He occupied no representative relation to either company. The term Local Agent, as used in Article 1223, of the Statutes of Texas, *supra*, must necessarily refer to an agent having charge locally of the business of a foreign corporation then being carried on in the State, through or under his agency. Sebree was not such an agent, and the business of the Rock Island Company with which he was connected was not carried on within the State of Texas but in the Indian Territory. The fact that he resided in Texas can make no difference. It is not the place of residence of the agent, but the place in which the business in which he is employed as agent is carried on, that gives authority to serve process upon him. As was said in *Earle v. C. & O. Ry. Co.*, 127 Fed. 235-6, "the mere presence of some of its officers or agents does not justify the conclusion that they have brought the corporation with them."

Goldey v. Morning News, 156 U. S. 518-521-522.

It has been held frequently by this Court and others that service cannot properly be made upon an officer of a foreign corporation whose duties grow out of busi-

ness done by the corporation in some other jurisdiction.

The service upon the train conductor, A. L. Thomas, and V. N. Turpin, ticket seller of the Gulf Company, was properly quashed. Thomas was a mere subordinate employe of the Rock Island Company when employed in its service in the Indian Territory, and a like employe of the Gulf Company when employed in its service in Texas. The fact that he was conductor on a through train between Caldwell and Fort Worth did not make him a joint employe of the two companies over whose lines he ran. It was entirely competent for one company to employ him as conductor to run its trains between Caldwell and Terral, and the scope of his employment was not enlarged because some other company, when he reached the end of his run, employed him to conduct its train to another point, the employment in each case being entirely independent, each company paying for the service rendered on its own line, and he being responsible solely to the Company upon whose line he was at the time engaged. While employed by the Gulf Company in running its trains in Texas, he was not employed by the Rock Island Company in running trains in Kansas and the Indian Territory. His employment for the Rock Island Company ceased for the time when he passed into the service of the Gulf Company. The fact that a person works during one part of a day for one company and during the other part of the day for another company does not make him a joint employe of the two companies, or

make him the agent of one company while he is engaged exclusively in the service of the other company. The affidavit of Thomas (Record, 18) shows the separate character of his employment with each line. The supplemental agreement of facts (Record, 29-30) shows that Thomas was carried on the Rock Island pay-roll for services rendered on its line north of the Texas state line, and on the pay-roll of the Gulf Company for services rendered on its line south of the Texas state line.

Said supplemental agreement also shows that V. N. Turpin at the time of the service of process was ticket agent of the Gulf Company at Fort Worth "engaged in selling tickets for the Chicago, Rock Island and Gulf Railway Company over its lines, and also over the line of the Chicago, Rock Island and Pacific Railway Company, and all its connections." The language is that Turpin was engaged in selling tickets for the Gulf Company. There was no agreement that he was engaged in selling tickets for the Rock Island Company. The fact that tickets sold for the Gulf Company by its agent Turpin were good over lines of the Rock Island Company, or other lines did not make him local agent of the Rock Island Company, or any other company over whose lines these tickets were made good.

Sections 2 and 3 of the Act of March 13th, 1905 (Gen. Laws of Texas, 1905, p. 29), *supra*, are in violation of the constitution of the United States, in that the service provided for does not constitute due pro-

cess of law. By these sections the State of Texas attempts to authorize the service of process on a foreign corporation by serving a person in that state as agent of the foreign corporation on the mere ground that he handles trains across the state line of the State of Texas, or upon any person who sells tickets for the transportation of passengers or makes contracts for the transportation of property over any line of railway of such foreign corporation, without regard to whether the persons upon whom process is so served are actually in the employ of the foreign corporation in the transaction of its business in the State.

In the Buie case considerable stress was laid upon the fact that the traffic contract between the two companies provided for a through line for the transportation of freight and passengers. As has already been stated, that contract was abrogated before the Gulf Company purchased the property of the Texas Company but it may be said that the practice of transporting passengers and freight from points on the line of one Company to points on the line of the other Company as through traffic still continues and there is no good reason why it should not continue in the manner in which it is now carried on. It is manifestly in the interest of the public, as well as in the interest of the two companies, that it should continue. A carrier may lawfully contract for the transportation of passengers and freight beyond its line, and unless otherwise limited by law may, in the contract for carriage, stipulate

against liability or may become liable for the safe transportation of such passengers or freight to the point of destination. The laws of many States, including the State of Texas, provide for through carriage and through billing. Section 20 of the Interstate Commerce law, as amended by the act of June 29th, 1906, provides "that any common carrier, railroad or transportation company receiving property for transportation from a point in one State to a point in another State, shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss or damage or injury to such property caused by it or any common carrier, railroad or transportation company to which said property may be delivered, or over whose line or lines such property may pass." The act further provides that the initial carrier issuing the through bill of lading may recover from the carrier on whose lines the damage was sustained, the amount it may be required to pay.

Obviously two corporations may within certain limits so conduct their affairs as to make them jointly liable for the acts of either, and so as to make each liable for the acts of the other. But because such corporations may be jointly or severally liable, it does not follow that in an attempt to enforce such liability the service of process upon one of them or the agents of one of them, would justify a personal judgment against the other. Liability for a given action is one thing, and the sufficiency of the service of process to confer jurisdiction

on the Court to render personal judgment on account of that liability is entirely another thing.

In the Buie case, *supra*, it was held, substantially, that by reason of its contract with the Gulf Company, its furnishing of money to construct the line of the latter company, and its ownership of the majority of its stock, the Gulf Company became the instrument or agency through which the Rock Island Company was doing its business in Texas; and it went further in holding that this agent which the Court held to be controlled and dominated by the Rock Island Company was liable for injuries received by the plaintiff in Iowa while he was being carried by the Rock Island Company from Ryan, Indian Territory, to Chicago, Illinois, although the Texas Company in no manner participated in causing the injury, did not participate in any manner in his transportation, and was not entitled to any part of the compensation earned for his carriage; and under the ruling of the Supreme Court, judgment was rendered against both companies and in favor of the plaintiff, which judgment was affirmed.

C. R. I. & P. Ry. Co. v. Buie, 31 Tex. Civ. App. 654.

In *Pullman Palace Car Co. v. Missouri Pacific*, 115 U. S. 587, it was held that the Missouri Pacific Company, although it held practically all of the stock of the St. Louis, Iron Mountain and Southern Ry. Co., and although five directors of the Missouri Pacific were also directors of the Iron Mountain Company, and the

two roads were operated under the same management, the general offices of the two companies being kept together, and both roads being managed substantially by the same persons, was not liable for the obligations of that Company, its corporate organization being maintained and its board of directors remaining in control of the property. The Court said:

"We are also of opinion that the railroad of the St. Louis, Iron Mountain and Southern Company is not controlled by the present Missouri Pacific Company in such a way as to require that company to haul the Pullman cars over it, if the contract is binding on the new company to the same extent it would be on the old were that company still in existence and standing in the place of the new. Confessedly the St. Louis, Iron Mountain and Southern Company keeps up its own corporate organization. It operates its own road. It has its own officers and makes its own bargains. The Missouri Pacific owns all, or nearly all, its stock, and in that way can determine who shall constitute its board of directors, but there the power of that company over the management stops. The board when elected has controlling authority, and for its doings is not necessarily answerable to the Missouri Pacific Company. The two roads are substantially owned by the same persons and operated in the same interest, but that of the St. Louis, Iron Mountain and Southern Company is in no legal sense controlled by the Missouri Pacific. . . . The Missouri Pacific Company has bought the stock of the St. Louis, Iron Mountain and Southern Company, and has effected a satisfactory election of directors, but this is all. It has all the advantages of a control of the road, but that is not in law the control itself. Practically it may control the company, but the company alone controls its road. In a sense, the stockholders of a corporation own its property, but they are not

the managers of its business or in the immediate control of its affairs. Ordinarily they elect the governing body of the corporation, and that body controls its property. Such is the case here. The Missouri Pacific Company owns enough of the stock of the St. Louis, Iron Mountain & Southern to control the election of directors, and this it has done. The directors now control the road through their own agents and executive officers, and these agents and officers are in no way under the direction of the Missouri Pacific Company. If they or the directors act contrary to the wishes of the Missouri Pacific Company, that company has no power to prevent it, except by the election, at the proper time and in the proper way, of other directors, or by some judicial proceeding for the protection of its interest as a stockholder. Its rights and its powers are those of a stockholder only. It is not the corporation, in the sense of that term as applied to the management of the corporate business or the control of the corporate property."

In *Porter v. Pittsburg Bessemer Steel Co.*, 120 U. S. 670, the Court said:

"The mere fact that Crawford owned a majority of the stock did not give him the legal control of the company; nor from such ownership can the legal inference be drawn that he dominated the board of directors."

In *Penn. Railroad Co. v. Jones*, 155 U. S. 333, 344-345, it was attempted to hold the Pennsylvania Railroad Company liable for damages sustained by a mail clerk being transported on a train of the Virginia Midland Railway Company. On the trial there was an attempt to show that the lines forming the through route, although owned by different companies, were operated in connection with each other on joint account and that

there was such community of interests among them as would make them all liable for the acts of agents or employes of any one of them. The Pennsylvania Company interposed a special plea denying that it was a common carrier of passengers and freight as charged in the declaration. Reports of the stockholders of the Pennsylvania Company, giving data with respect to control of lines and showing that it was a large stock and bond holder in the several subsidiary lines joined with it in the suit, were put in evidence. There was also a map showing a continuous line between Philadelphia and Quantico with letters signifying that the roads embraced therein were these subsidiary companies. It was also proven that tickets were sold by the Pennsylvania Company over these lines and that some persons who were officers of the Pennsylvania Company were likewise officers of the other companies and that employes of some of the roads were paid from the pay car whose brakemen and conductor wore the uniform of the Pennsylvania Company. Newspaper advertisements were also put in evidence calling attention of the public to the Great Pennsylvania Route, in which it was shown that Jas. R. Wood was General Passenger Agent and Chas. E. Pugh, General Manager of the Pennsylvania Company, stationed at Washington; and it likewise appeared that they occupied similar positions in the other companies. There was also evidence that pilots were put upon through trains who were sometimes employes of one of these companies and

sometimes of another; that the pilot who took charge of the train upon which the injury occurred and under whose direction it was at the time, wore such a uniform as was worn by the employes of the Pennsylvania Company except that on the buttons were the initials "B. & P." and that he was on the pay-rolls of the Alexandria & Fredericksburg Railway Company, one of the defendants. It was also shown that engines and cars going over the several roads bore the initials of different lines indiscriminately. It was held that taking the plaintiff's evidence as a whole and supplementing it with such facts favorable to it as appeared in the defendant's evidence, the Pennsylvania Company was not liable. The Court said:

"That the Pennsylvania Railroad Company owned stock and bonds of some of the other companies defendant did not tend to show a partnership or agreement to run the roads of the latter on common account. Such ownership rather went to explain why some of the officers of the Pennsylvania Company held official positions in the other companies, and to show why their officers were consulted about the arrangement made between the Alexandria and Washington, the Alexandria and Fredericksburg, the Baltimore and Potomac Railroad Companies, and the Virginia Midland Railway Company, for the use by the latter of the roads of the former between the cities of Alexandria and Washington, as testified to by J. S. Barbour, and also explains the references made in the reports of the Pennsylvania Railroad Company to these roads as connecting with their system. . . . That the Pennsylvania Railroad Company advertised that it ran trains, or connected with trains of other companies, so as to form through lines, without breaking bulk or transferring

passengers, did not tend to show any contract or agreement between the companies to share profits and losses. Nor was there evidence, in the present case, that there was any actual participation by the Pennsylvania Railroad Company in the earnings of the other companies which used the road between the cities of Alexandria and Washington."

In *Connelly v. Mathieson Alkali Works*, 190 U. S. 406-409, 411, it was held that it is not every service upon an officer of a corporation which will give a State court jurisdiction of a foreign corporation; that the residence of an officer of a corporation in the State does not necessarily give it a domicile in the State; that to authorize service upon it he must be there officially representing the corporation in its business, and that service upon a director of a foreign corporation who resided in New York was not sufficient to bring into court a corporation which was not at the time doing business in the State. The defendant corporation at one time owned property in that State, but afterwards, and before the service of process, conveyed it to the Castner Electrolytic Alkali Company, a corporation organized under the laws of Virginia. The consideration of the conveyance was One Dollar and other valuable considerations, the substantial consideration being the entire capital stock of the grantee. The defendant was a corporation organized under the laws of Virginia. The summons was served on two directors of the defendant company who resided in the city of New York, but who were not officers of the Company. A motion to quash

the service was filed and there was a reference to a Master to take testimony and report on the facts. After stating the facts found, he reported the following conclusions:

"The fact that it held the entire capital stock of the Castner Electrolytic Alkali Company and that the operations of that company were carried on under the same management as before December 31, 1900, is not material. The new corporation was a separate legal entity, and whatever may have been the motives leading to its creation it can only be regarded as such for the purposes of legal proceedings.

"It was that corporation alone which transacted any business in this State, notwithstanding it may have been for all practical purposes merely the instrument of the defendant corporation. *People v. Am. Bell Telephone Co.*, 117 N. Y. 241; *United States v. The Same*, 29 Fed. 17."

After quoting the language of the Court in *Goldey v. Morning News*, 156 U. S. 518, to the effect that it is an elementary principle of jurisprudence, that a court cannot acquire jurisdiction over the person of one who has no residence within its territorial jurisdiction, except by actual service of notice within the jurisdiction upon him or someone authorized to accept service in his behalf, the Court said:

"The principle announced in *Goldey v. Morning News* covers the case at bar. The residence of an officer of a corporation does not necessarily give the corporation a domicile in the State. He must be there officially—there representing the corporation in its business. *St. Clair v. Cox*, 106 U. S. 350. In other words, a corporation must be doing business there, and, recognizing the necessity of this, the Circuit Court referred

that issue to a Master. The decision upon the issue was adverse to the contention of the plaintiff, and we cannot say that it was not sustained by the evidence and the presumptions which must be conceded to the report of a Master and the judgment of the lower court."

In *United States v. American Bell Telephone Co. et al.*, 29 Fed. 17, writs were issued to the marshal requiring him to summon the American Bell Telephone Company, reciting that it was a "corporation doing business and found in the State of Ohio." The marshal returned that he had served a writ "on the defendant, the American Bell Telephone Company (which is a corporation doing business and found within the Eastern and Western Divisions of the Southern District of the State of Ohio) by reading the same to A. D. Bullock, the President of the City and Suburban Telephone Company, and delivering to him a duly attested copy thereof (the said City and Suburban Telephone Company being an agent and partner of the said American Bell Telephone Company, within said Southern District of the State of Ohio), on March 24th, 1886. Substantially the same return was made on the summons directed to the marshal of the Northern District. In sustaining a motion to quash these returns Mr. Justice Jackson held that they were insufficient on their face and that the jurisdiction averments in the bill to the effect that the local corporations are the "partners and agents" of the defendant, did not justify the service; that the non-resident partner could not be brought personally before the court upon service upon the resident

partner. It was held that the returns were further irregular and open to the objection that the marshal had not confined himself to a statement of what he did in executing the subpœnas, but states conclusions of law and fact apart from what was done in reciting that the local corporations are partners and agents of the American Bell Telephone Company. In view of the fact that these returns might be amended the Court proceeded to consider broadly the question whether jurisdiction could be obtained over the defendant by any proper service on the facts shown in the bill. The evidence showed that business was carried on in Ohio by the local companies as licensees of the American Bell Telephone Company, and that rentals and royalties were paid to it by such companies at its Boston office. It was held that it did not appear that the Bell Company was doing business in Ohio. With respect to the meaning of the term "managing agent" which must be taken to be convertible with the term "local agent," the Court said:

"The terms 'managing agent' indicate the character of the business the foreign corporation must be engaged in transacting in order to be liable to suit here. They clearly imply the carrying on of the corporate business, or some substantial part thereof, by means of an agent who manages and conducts the same, within the limits of the State, for and on account of the foreign corporation. The business done must arise to the dignity and importance implied by the phrase 'managing agent' in order to come within the operation of the statute. But we cannot understand how a local corporation, as a distinct and legal entity, in carrying

on and conducting the business of telephony in Ohio, for which it was chartered and organized, can be regarded, either in fact or in law, as the 'managing agent' of a foreign corporation in respect to *that same business*. How can the transaction of its *own business* by the local corporation make it the 'managing agent' of another and a foreign corporation having separate and distinct corporate functions? This would be an anomaly in the law. If such relation could exist under such circumstances, its actual existence is positively and distinctly denied by the plea, and is neither disclosed by the contracts nor allleged in the bill. . . . The Bell Telephone Company cannot, therefore, be held or considered as carrying on the business of telephony conducted by the local corporation, and that is the only business done."

The Court said further:

"But it will hardly do to say that the ownership of property in the State is the doing of business here, within the meaning and intent of the law, so as to make the owner personally present."

The Court summarizing its conclusions as follows:

"The various matters relied on to show that the American Bell Telephone Company is to be found in Ohio, and subject to the jurisdiction of this Court,—such as its ownership of the telephone instruments used by the licensee corporations; the ownership of stock in one or more of the local companies; the rights and powers reserved to it of resuming possession of its telephone instruments, and taking control of the telephone business, in the event of default on the part of the licensee corporations in complying with the provisions of the license contracts; the sharing in the gross receipts of certain portions of the business done; the reservation of rents and royalties; the right to make changes; and the restrictions and limitations imposed upon the licensee companies,—neither singly nor in the

aggregate established the two *essential facts* necessary to bring the American Bell Telephone Company within the power and jurisdiction of this Court, viz., that said corporation is now, or was at the commencement of this suit, carrying on its business in the State of Ohio, and that it had a 'managing agent' or agents representing it here."

The case of *A. T. & S. F. R. Co. v. Cochran,* 43 Kan. 225, was an action to recover damages for the death of a passenger on a connecting auxiliary line of the defendant. A recovery was sought against the defendant, the Santa Fe Company, on the ground that it was a stockholder and owned and controlled the Southern Kansas Railway. It was held that the fact that the Santa Fe Company owned the stock of the Southern Kansas Company and exercised such control as a stockholder might lawfully exercise did not make it liable for the death of the passenger caused by the negligence of the Southern Kansas Company. The Court said:

"Under the laws of this State, a railway company has a lawful right to purchase and hold stock of any other railroad company, the line of whose railroad, constructed or being constructed, connects with its own. (*Atchison Rld. Co. v. Fletcher,* 35 Kan. 236.) The stockholders of a railroad company may be said in a certain sense to control, direct and manage the road, but an action for the negligence of the officers, agents or employes of the railroad company must be brought against the Company, not against the stockholders."

No imperfections, if there were any, in the organization of the Texas Company, and no relations, proper or improper, which it sustained to the Rock Island

Company, are chargeable to the Gulf Company. The petition in this case alleges that the Gulf Company is "a corporation duly and legally incorporated and organized under the laws of the State of Texas." It is admitted (Record, 26) that on the 22d day of September, 1903, the Gulf Company purchased the railway of the Texas Company. It is also admitted that the train crews on through passenger and freight trains were handled as they were before such sale, but the testimony of Vice-President Hovey shows that, with this exception, the road in Texas is not operated as it was before the traffic contract between the Rock Island and Texas Company was cancelled. (Record, 48-49.) So far as the testimony shows, the management of the Gulf and Rock Island lines is now absolutely separate and independent. In some instances, for mutual convenience and economy, the same persons are employed in a minor capacity in the service of both companies, but each company controls and pays such employes when engaged in its service. These employes are in no sense joint employes.

There is no evidence as to how or to whom the stock of the Gulf Company was originally issued. A large majority of it stands on the books of the Company in the name of Wm. Wesley Johnson. But it may fairly be inferred from the evidence that he holds it as trustee or pledgee for the Rock Island Company.

In concluding its opinion in the Buie case, the Court said:

"No one of the facts or circumstances in evidence would alone be sufficient to show the Chicago, Rock Island and Pacific Railway Company subject to the jurisdiction of the courts of this State, but the combined force of all these facts and circumstances compel the mind to the conclusion that the chartering of the Chicago, Rock Island and Texas Railway Company was a mere mask under which the Pacific Company carried on its business in Texas."

Buie v. C. R. I. & P. Ry. Co., 95 Tex. 66.

An examination of the opinion in that case will show that the Court, in reaching its conclusion, attached great importance to the traffic contract of Jan. 2d, 1903, and to certain facts respecting the operation of the line of the two companies under that contract, as well as to the manner in which the line of the Texas Company was financed and constructed. This contract was cancelled, presumably, in view of the criticism of the court in the Buie case. As the Gulf Company has never been a party to that contract and has never conducted its business in the manner provided by the contract, the questions presented upon the contract in the Buie case do not arise here. The same may be said of the manner in which the line of the Texas Company was financed and constructed. The Texas Legislature authorized the Gulf Company to purchase that line and it did so, and it does not matter now how or by whom it was constructed; but it may be said, in passing, that there is no evidence that it was not constructed in a legitimate way by the Texas Company.

It seems to be expressly conceded in the Buie case that the fact that a foreign railway company owns a majority of the stock of a domestic company does not, of itself, give the courts of Texas jurisdiction of the foreign company. Eliminating the question of the ownership of the stock of the Gulf Company by the Rock Island Company, there does not seem to be much left in the case at bar upon which to form a contention that the courts of Texas have jurisdiction over the Rock Island Company. There is no evidence tending to show that it has exercised or has attempted to exercise any control over the affairs of the Gulf Company which a stockholder may not lawfully and properly exercise. The little economies which have been practiced by the two companies in the management of their respective properties and the arrangement for the through movement of freight and passenger trains, instead of being wrongful and unlawful, are entirely lawful and proper and are in the interest of the public. No one would be benefited, but the public would be seriously inconvenienced, if each company stopped its trains on the Texas line in the middle of Red River and compelled the transfer of passengers and freight. No wrong is done and no harm is done to anyone by the fact that a train dispatcher located at Chickasha, employed and paid separately by each Company, dispatches trains over the lines of the respective companies, nor is there anything improper in the fact that the Trainmaster,

having separate and independent jurisdiction over a portion of the lines of each of these companies, acts for both of them. The arrangement doubtless tends to the more economical operation of the two lines.

The Circuit Court found the issues of fact and law for the defendant. It is respectfully submitted that in this there was no error, and that the judgment of the Court in dismissing the case for want of jurisdiction ought to be affirmed.

M. A. Low,
Attorney for Defendant in Error.

Supreme Court of the United States.

No. 225.—October Term, 1906.

Augusta A. Peterson and Ida Peterson, a minor, Plaintiffs in Error, *vs.* The Chicago, Rock Island and Pacific Railway Company.	In error to the Circuit Court of the United States for the Northern District of Texas.

[April 8, 1907.]

This case comes here upon a certificate from the Circuit Court of the United States for the Northern District of Texas, raising the question of the jurisdiction of that court over an action brought by plaintiffs in error, Augusta A. Peterson and Ida Peterson, the latter a minor, suing by her mother and next friend, and both being citizens of Texas, against the Chicago, Rock Island and Pacific Railroad Company, an Illinois corporation.

The plaintiffs in error, wife and daughter of one John Peterson, an employe of the Pacific Company, sought recovery for the alleged negligent killing of said John Peterson while engaged as an engineer in its employ at Chickasha in the Indian Territory, on October 19, 1903. It is charged in the petition that the Pacific Company was then engaged in carrying on its business in the State of Texas in the name and through the Chicago, Rock Island and Gulf Railroad, a corporation of the State of Texas, which latter corporation, it was alleged, was an auxiliary corporation and agent of the defendant, and was then and there dominated and controlled by it, its lines of railroad being operated by the Pacific Company as a part of the Rock Island system.

It was charged that S. B. Hovey, Vice President and General Manager of the Gulf Company, residing in Tarrant County, Texas, was also the general manager and local agent of the Pacific Company in that State. It was also alleged that F. E. Merrell was the local agent in Tarrant County, Texas, of the Pacific Company, and that M. E. Sebree was the local agent for it in said county and State.

Service of citation was made on the defendants by serving the parties above named as its agents in Tarrant County, Texas, in pursuance of the statute of the State. The defendant moved to quash the service on the ground that neither of the parties were such agents, and filed in support

of its motion the affidavits of each, Hovey, Merrell and Sebree, denying such agency. Thereafter plaintiffs made application for additional process in pursuance of a later statute of the State of Texas, to be hereinafter noticed, and charged that A. L. Thomas, who resides in Tarrant County, Texas, was a train conductor engaged in handling trains over the tracks of the Gulf Railroad in the State of Texas and over those of the Pacific Railroad beyond the limits of the State, and that he was engaged in running and handling passenger trains on the tracks of both said companies on both sides of the State line, and is an agent and representative of the defendant company, residing in Tarrant County, Texas. It was further charged that V. N. Turpin, who resides in Fort Worth, Tarrant County, Texas, was a ticket agent engaged in the selling of tickets and the making of contracts for transportation and for and in the behalf of the Pacific Company from the city of Fort Worth, Texas, over the lines of the Gulf Company in the State of Texas and over the line of the defendant company beyond the line of said State, and was an agent and representative of the defendant company in said State and county.

These persons, Thomas and Turpin, were accordingly served under the application for new process as the agents and representatives of the defendant company in the said county and State.

The defendant company filed a supplemental motion to quash this service upon the grounds that these persons were not the agents or representatives of the defendant company, filing their affidavits in support of said motion. In the return of the writ served on Hovey it was also set forth that he was general manager of the Pacific Company, residing in Tarrant County, Texas. The motion and supplemental motion to quash the service was heard by the court, the motion sustained and the cause dismissed for want of jurisdiction, the court holding that the defendant had not been properly served with process.

From the stipulated facts, documentary evidence and testimony embodied in the bill of exceptions the following facts, pertinent to the determination of the issues, may be gathered:

The Pacific Company and the Gulf Company are both of the "Rock Island System" of railroads. The second annual report of the "Rock Island Company" (June 30, 1904,) shows that it is the owner of the entire capital stock, except directors' shares, of the Chicago, Rock Island and Pacific Railroad Company, a corporation of Iowa; that company owns 695,574.75 shares of the capital stock of the Chicago, Rock Island and Pacific Railway Company, a corporation of the States of Illinois and Iowa, and 286,349 shares of the common capital stock of the St. Louis and San Francisco Railroad Company, a corporation of the State of Missouri, and the report adds:

"Each of the two latter companies operates independently its lines of railway and each is interested through the ownership, directly or indirectly, of at least the majority of the capital stock, in certain subsidiary companies, each of which operates its property independently. The lines of the Chicago, Rock Island and Pacific Railway Company, including lines formerly of the Choctaw, Oklahoma and Gulf Railroad Company, the Burlington, Cedar Rapids and Northern Railway Company, and the Rock Island and Peoria Railway Company, together with the lines of its subsidiary companies, namely, the Chicago, Rock Island and Gulf Railway Company, and the Chicago, Rock Island and El Paso Railway Company, comprise what is known as the 'Rock Island System.'

"As the Rock Island Company is the owner of the entire capital stock, except directors' shares, of the Chicago, Rock Island and Pacific Railroad Company, the income of both the companies is included in the following statement."

This report purports to be made by order of the board of directors, was dated October 17, 1904, and was signed by Robert Mather, President. Appended to this report as a part of it, under the head of "Statements and Exhibits, Rock Island System Lines," was the following statement, to wit:

"On page 23 of said report, under the heading of 'Rock Island System—State of Mileage Operated':

The Chicago, Rock Island and Gulf Railway Company:

Terral, I. T. (Red River), to Dallas, Texas	126.67
Bridgeport, Texas, to Graham, Texas	53.29
Texhoma, O. T., to Bravo, Texas-New Mexico State Line	91.75
Texola, O. T. (Texas State line), to Amarillo, Texas	112.97
Total Chicago, Rock Island and Gulf Railway Company..	386.68"

Plaintiff also introduced in evidence a railroad folder, dated July 10, 1904, on which was printed in large letters "Rock Island System Time Table," in which appears the names of the Chicago, Rock Island and Pacific Railway Company; Chicago, Rock Island and El Paso Railway Company, and the Chicago, Rock Island and Gulf Railway Company; with a list of the names and residences of the passenger and freight agents, and a schedule of the passenger trains on said lines. On the inside of the cover of the folder is a map showing the lines of the said railroad company, so connected as to belong to one system. Below the map is printed:

"The Rock Island System of America.

"The Rock Island System covers a territory which is 1,000 miles long by 1,000 miles wide, supports a population of more than 21,000,000 people, and is capable of supporting at least four times that many. The area of this territory is as great as the combined area of France, Germany, Italy, Spain, Austria-Hungary, Denmark, the Netherlands, Turkey, Switzerland and Greece, and its productive capacity is greater.

"Here are produced more than half the wheat, more than half the corn, and nearly half the cotton, silver, and gold produced in the United States."

The origin of the Gulf Company is thus stated in the annual report of the Rock Island road, June 30, 1904:

"*Consolidation of Texas Lines.*

"The legislature of the State of Texas, by an act passed March 27th, 1903, authorized the sale of the railroads and properties of the Chicago, Rock Island and Texas Railway Company, extending from the Red River to Fort Worth, Texas, with a branch from Bridgeport, Texas, to Graham, Texas. The Chicago, Rock Island and Mexico Railway Company extending from the Texas-Oklahoma line near Texhoma to the Texas-New Mexico line at Bravo; and the Choctaw-Oklahoma and Texas Railroad Company, extending the Texas-Oklahoma line near Texola, Texas, to Amarillo, Texas, to the Chicago, Rock Island and Gulf Railway Company, which had constructed a line of railroad from Dallas, Texas, to Fort Worth, Texas, where it connected with the line first named above.

"In accordance with the authority granted, the properties referred to were, by appropriate corporate action, deeded to the Chicago, Rock Island and Gulf Railway Company on December 1, 1903.

"This consolidation permits the properties in question to be operated by one management instead of four separate sets of officials. as heretofore, resulting in economy of operation and greater efficiency in service.

"In stating the assets and liabilities of the companies forming the system, the holdings of the Chicago, Rock Island and Pacific Railway Company in the bonds and capital stock of auxiliary lines, together with loans between system companies, have been eliminated from the liabilities and a like reduction made in the value of the assets; the figures as stated, therefore, represent the value of the assets and the real liability without duplication."

Plaintiffs also introduced in evidence the twenty-fourth annual report of the Pacific Company for the year ending June 30, 1904, in which it is set forth:

"They have included therein operations and affairs of the operated lines and auxiliary companies forming the 'Rock Island System.'

"In order to make exhibits comparative the figures for the last preceding year have been restated to meet changed conditions due to the including in this report the operation of the auxiliary companies.

"These lines, thus forming the Rock Island System, are the following:

Mileage Operated.

The Chicago, Rock Island and Pacific Railway	6,760.74
The Chicago, Rock Island and El Paso Railway	111.50
The Chicago, Rock Island and Gulf Railway	386.92

"On page 9 of said report, under the head of 'Property' and 'Franchises,' occur the following:

"During the year expenditures were made for construction of extensions and completion of system lines as follows:

Fort Worth, Texas, to Dallas, Texas	$111,371 55
Yarnall, Texas, to Amarillo, Texas	108,615 64
Jacksboro, Texas, to Graham, Texas	32,138 96
Red River to Fort Worth, Texas	28,013 04
Texhoma (Texas State line) to Bravo, Texas	9,646 03
Texola (Texas State line) to Yarnell, Texas	2,328 30

"In addition to the expenditures during the year as above, there has been transferred to property account sundry amounts expended prior to July 1st, 1903, for construction of new lines and shops, and purchase of equipment which have been heretofore stated in the system assets as 'Advances for Construction and Equipment,' the property represented by such amounts having been deeded to the Chicago, Rock Island and Pacific Railway Company or the Chicago, Rock Island and Gulf Railway Company, $23,169.83.

"There has also been transferred to this account the expenditures made prior to July 1st, 1903, for the purchase of shares of capital stock of the Burlington, Cedar Rapids and Northern Railway Company and the Rock Island and Peoria Railway Company, also cost of stock of the Choctaw, Oklahoma and Gulf Railroad Company in excess of its par value and the value of bonds of the Chicago, Rock Island and Texas Railway Company, owned by the Chicago, Rock Island and Pacific Railway Company, the value of said property appearing upon balance sheets shown in prior year's report as 'Stocks and Bonds of Constituent Companies,' $16,446,009.73.

"On page 11 of said report, under the heading 'New Lines Open for Operation,' the following statements are made, viz:

"Additions have been made to the operated system—mileage since the last report as follows:

"By the Chicago, Rock Island and Gulf Railway Company, Fort Worth, Texas, to Dallas, Texas, 33.26 miles, opened for operation in December, 1903.

"Yarnall, Texas, to end of track west of Amarillo, Texas, 18.40 miles, opened for operation in November, 1903.

"Corrections in measurements, Red River to Fort Worth, Texas, .83 miles.

"Operated system mileage was decreased 18.22 miles between Yarnall, Texas, and Amarillo, Texas.

"Fort Worth, Texas, to Dallas, Texas.—This line was completed and the line opened for operation by the Chicago, Rock Island and Gulf Railway Company, December 1st, 1903. It is 33.26 miles in length, connecting with the line of the former the Chicago, Rock Island and Texas Railway Company at Forth Worth, and extending to Dallas, where, by an agreement with the Gulf, Colorado and Santa Fe Railway Company, it has the joint use of the latter company's terminal facilities.

"The opening of this line gives the Gulf Company direct entrance into Dallas, enabling it to compete for the traffic of that important commercial center.

"On page 12 of said report is the following statement, viz:

System Mileage Under Construction.

By the Chicago, Rock Island and Gulf Railway Company:

Amarillo, Texas, to Texas-New Mexico boundary	69.87

"Amarillo, Texas, to Tucumcari, N. M. The grading for a considerable portion of this line has been done from Amarillo westward.

"It was deemed advisable, however, to suspend active construction until such time as the business outlook would warrant the expenditure necessary to complete."

Upon the hearing counsel made an agreed statement of facts, as follows:

"The Chicago, Rock Island and Pacific Railway Company is a consolidated corporation, chartered under the laws of Illinois and Iowa. It has been an existing railroad corporation for over twenty years. In June of the year 1892 and for some years prior to that time the said railway company owned and operated a line of railway from the city of Chicago in a southwesterly direction through the States of Illinois, Iowa, Missouri and Kansas to Minco, Indian Territory. During the year 1892 this company extended its line from Minco, Indian Territory, in a southerly direction to the north boundary line of Texas in Montague County.

"The Chicago, Rock Island and Texas Railway Company was a corporation organized under the laws of Texas on the 15th day of July, 1892. It had an authorized capital stock of three million dollars, in shares of one hundred dollars each, of which seven hundred and fifty-four shares were subscribed for at the time of its organization. Below is a list of the names of the stockholders and the number of shares of capital stock of this company subscribed for by each, at its original organization.

[The list shows that of the 754 shares subscribed, 745 were held by one of the attorneys of the Pacific Company, and of the other 9 shares, 3 were held by other employes of that road.]

"Under the charter of the Chicago, Rock Island and Texas Railway Company, it was authorized to construct a line of road from the north boundary line of Texas at a point in Montague County in a southerly direction through Montague, Wise and Parker Counties; the charter being afterward amended, authorized the construction into Tarrant County. This charter authorized the issuance of first mortgage bonds amounting to fifteen thousand dollars per mile for construction and not exceeding five thousand per mile for equipment,

"When the Chicago, Rock Island and Pacific Railway Company constructed its line to a point near the north bank of the Red River, north of Montague County, construction work stopped for a period of time. The Chicago, Rock Island and Texas Railway Company began the construction of its line at the north line of the State in Montague County some time after the Chicago, Rock Island and Pacific Railway Company stopped work at a point north of Red River. After construction work began on the Chicago, Rock Island and Texas Railway Company south of Red River, the Chicago, Rock Island and Pacific Railway Company constructed its line from the point where work had stopped north of Red River, to a connection with the Chicago, Rock Island and Texas Railway Company at the State line. The Texas company finished the construction of its line into Fort Worth in the latter part of 1893. Some of the same contractors who constructed the Chicago, Rock Island and Pacific Railway from Minco south to Red River also took contracts for work on the Texas line.

"On the 2d day of January, 1893, after the Chicago, Rock Island and Texas Railway Company had constructed and was operating its line as far south as Bowie, Texas, it entered into an agreement with the Chicago, Rock Island and Pacific Railway Company, a true copy of which is hereto attached and marked 'Exhibit A' for identification. This agreement went into effect immediately after it was executed, and was acted upon and observed by said companies until the 14th day of April, 1903, when the same was canceled under authority of the board of directors of each company by a written agreement, a true copy of which is hereto attached, marked 'Exhibit B' for identification.

[Exhibits A and B are not printed, as they are the contract and cancellation thereof, both made before the present case arose.]

"After the Chicago, Rock Island and Texas Railway Company had constructed its line, it issued first mortgage bonds to the extent of fifteen thousand dollars per mile thereon, and these bonds were purchased by the Chicago, Rock Island and Pacific Railway Company, for which it paid the Texas line one hundred cents on the dollar. The Chicago, Rock Island and Texas line cost a large sum of money in excess of the amounts for which it issued bonds, [which additional cost was paid by application of money subscribed by the stockholders and by borrowing from the Chicago, Rock Island and Pacific Railway Company, which money so borrowed has long since been returned with interest.

"At the time the Chicago, Rock Island and Pacific Railway Company constructed its line to Red River there was no town or city at that particular point, but there were towns and cities south, east and west of there in the State of Texas, and a railroad line, being a part of the Missouri, Kansas and Texas Railway of Texas, nine miles south of that point.

"When the Chicago, Rock Island and Texas Railway Company was first organized its general offices were located at Bowie, Montague County, Texas, and remained there for some time, until the charter was amended removing them to Fort Worth. The first general officers elected by the Chicago, Rock Island and Texas Railway Company, and their residences, were as follows: M. A. Low, Topeka, Kansas, President; J. C. McCabe, Bowie, Texas, General Freight Agent, and H. F. Weber, Bowie, Texas, Vice President, Superintendent, Secretary and Treasurer. All these men, prior to the time they were elected officials of the Chicago, Rock Island and Texas Railway Company had been employed in some capacity by the Chicago, Rock Island and Pacific Railway Company. In 1893 S. B. Hovey was elected Vice President of the Texas company and remained the Vice President and Superintendent of the Chicago, Rock Island and Texas Railway Company from that date until it was sold out under an act of the legislature in 1903. Mr. M. E. Sebree, who was served with citation in this case, was, for a number of years and until the date of its sale, trainmaster of the Chicago, Rock Island and Texas Railway Company and assistant trainmaster of the Chicago, Rock Island and Pacific Railway Company, with jurisdiction on that line up to Chickasha, Indian Territory. Prior to the time he was employed by the Chicago, Rock Island and Texas Railway Company he had been employed by the Chicago, Rock Island and Pacific Railway Company as brakeman, conductor, etc. M. A. Low, of Topeka, Kansas, remained the President of the Chicago,

Rock Island and Texas Railway Company from its organization until the 8th day of November, 1900, during all of which time he was one of the general attorneys of the Chicago, Rock Island and Pacific Railway Company.

"The Chicago, Rock Island and Texas Railway Company never issued or sold any equipment bonds, but before it was sold out under special act of the legislature to the Chicago, Rock Island and Gulf Railway Company, it had purchased and was the owner of between one thousand and twelve hundred freight cars of various kinds. During the time it had no equipment of its own, it rented rolling stock from various railway companies, but principally from the Chicago, Rock Island and Pacific Railway Company, and paid therefor prices prevailing between other lines of railway in the State of Texas.

"After the Chicago, Rock Island and Texas Railway Company constructed its line into Fort Worth from Bowie and after the execution of the contract between it and the Chicago, Rock Island and Pacific Railway Company, of date of January 2d, 1893, the most of the passenger and freight trains running over its line from Red River to Fort Worth and from Fort Worth to Red River were operated beyond its lines as the trains of the Chicago, Rock Island and Pacific Railway Company. The employes operating these trains were under the control of and paid by the Chicago, Rock Island and Texas Railway Company while working on its line, and they were also under the control of and paid by the Chicago, Rock Island and Pacific Railway Company while on its line. The equipment in the various trains went as far north as the business justified, some of the passenger equipment going as far as Chicago, and some to Kansas City, while the freight equipment stopped at points beginning at Chickasha, and from there north wherever the freight was destined. The passenger equipment coming south stopped at Fort Worth and the freight equipment, where the freight was handled in carload lots, went to destination, wherever that might be.

"Whenever necessary the Texas company would operate a local train to handle freight between Fort Worth and Red River, but as a general rule the through service maintained took care of this business. It operated a local freight and passenger train between Bridgeport and Jacksboro and afterward to Graham from the time that branch was built until it was sold out, which was several years. On the through freight trains the run made by the crews was from Fort Worth to Chickasha and on the through passenger train the run made by the crews was from Fort Worth to Caldwell, Kansas, these crews being handled and paid as above set forth. Outside the Pullman cars, which were in each passenger train, nearly all the passenger equipment used by the Chicago, Rock Island and Texas Railway Company belonged to the Chicago, Rock Island and Pacific Railway Company, for which it paid rental, as provided for under the terms of the contract herein first referred to.

"Defendant's witness will testify that the Texas company paid no part of the cost of operating the Chicago, Rock Island and Pacific Railway, nor did the Pacific Company pay any part of the cost of the operation of the Chicago, Rock Island and Texas Railway, nor did either of them participate in the earnings of the other. The relationship between the

companies is fully disclosed by the terms of the contract dated January 2d, 1893, which was observed up to the time of its cancellation.

"The passenger conductors, brakemen and train guards wear regular train uniforms and on the lapel of the coat are the words 'Rock Island,' and on the cap is the word 'Conductor,' 'Brakeman' or 'Porter.' Any member of these train crews, while working on the line of the Texas company, may be discharged by the proper officer of that company; and while working on the line of the Pacific Company may be discharged by the proper officer of that company. Either company, of course, employs additional men when needed.

"At the time the contract of January 2d, 1893, was cancelled the Chicago, Rock Island and Texas Railway Company was operating about an hundred and forty miles of road, and the Chicago, Rock Island and Pacific was operating about three thousand three hundred miles. For a considerable time after the Chicago, Rock Island and Texas Railway Company was built into Fort Worth it employed and maintained at its Fort Worth office a train dispatcher, who gave orders for the movement of trains over its line, but as a matter of economy this was abolished, and the Texas company paid a part of the salary of the train dispatcher located at Chickasha to give orders for the movement of trains over its rails.

"On the 22d day of September, 1903, the Chicago, Rock Island and Texas Railway Company, under authority of a special act of the legislature known as Senate Bill No. 161, was purchased and absorbed by the Chicago, Rock Island and Gulf Railway Company, and since that time has ceased to exist as a railroad or do any business as such.

"At the time the Gulf Company purchased the Texas company it had constructed and was operating a line of road from Fort Worth in Tarrant County to Dallas in Dallas County. The Chicago, Rock Island and Gulf Railway Company now owns and operates three hundred and eighty-six miles of road, all of which is located inside of the State of Texas. It does not own any railroad outside the State of Texas. It owns at the present time about sixteen hundred cars, including ballast, refrigerator and cattle cars, twenty locomotives, and eight cabooses, but does not own any passenger equipment other than the Pullman cars which are used in each of its passenger trains; it rents its passenger equipment from the Chicago, Rock Island and Pacific Railway Company, and pays therefor current rental charged by connecting lines in Texas. The train crews on both the through passenger and freight trains are handled in the same way that they were when the line into Fort Worth was operated by the Chicago, Rock Island and Texas Railway Company, but the Chicago, Rock Island and Gulf Railway Company is now operating in many places local trains between local points in Texas.

"The following is a list of stockholders and the amount of stock of the Chicago, Rock Island and Gulf Railway Company owned by each.

[The list is not printed, as the record discloses that, except directors' shares, the stock is held for the Chicago, Rock Island and Pacific Railway Company.]

"The Chicago, Rock Island and Gulf Railway Company is operating under a lease that part of the line of the Chicago, Rock Island and Pacific Railway Company which begins at the north boundary line of the State

of Texas, extending northward to the town of Terral, Indian Territory, a distance of about 11 miles.

"Blank passes, properly signed by different railroads, including the Chicago, Rock Island and Pacific, Texas and Pacific, Houston and Texas Central and other lines are sometimes placed with S. B. Hovey, and when so placed he has the permission of such line to fill in the names of parties and countersign the pass, and when so countersigned such pass is recognized by the line over which it is issued. The local ticket agents of the Chicago, Rock Island and Gulf Railway Company sell coupon tickets over the Chicago, Rock Island and Pacific Railway Company's line and nearly all other lines in the United States, which tickets are duly honored by the respective roads over which they read. The Chicago, Rock Island and Gulf Railway Company operates only one passenger train each way daily between Fort Worth and Dallas, while it operates two trains each way from Fort Worth north. It operates also only a local freight service between Fort Worth and Dallas, but no through freight service. Proper officials of the Chicago, Rock Island and Gulf Railway Company and of the Chicago, Rock Island and Pacific Railway Company exchange reports with each other as to the amount of exchange business done.

"No dividends were ever paid on the stock of the Chicago, Rock Island and Texas Railway Company, and none have been paid on that of the Chicago, Rock Island and Gulf Railway Company. The net earnings of the Chicago, Rock Island and Texas Railway Company were put into betterments and improvements, and the same is the case with the Chicago, Rock Island and Gulf.

"In 1897 L. G. Hastings, then secretary of the Chicago, Rock Island and Texas Railway Company, reported to the Interstate Commerce Commission that the Chicago, Rock Island and Texas Railway Company was controlled by the Chicago, Rock Island and Pacific Railway Company, through the ownership of a majority of its bonds. In 1899 he reported it as controlled by the Pacific Company, through its ownership of a majority of its capital stock.

"On the 2d day of August, 1904, M. E. Sebree, who resides in Fort Worth, Texas, was trainmaster of the Chicago, Rock Island and Gulf Railway Company, and was also assistant trainmaster of the Chicago, Rock Island and Pacific Railway Company between the north line of Texas and Chickasha, Indian Territory. He is paid by the Gulf Company for the work he does for it and by the Pacific Company for the work he does for it. S. B. Hovey is Vice President and Superintendent of the Chicago, Rock Island and Gulf Railway Company, and will testify that he is not connected with, nor does he perform any service for, any other railroad.

"After making certain changes and addition, the Chicago, Rock Island and Gulf Railway Company adopted the book of rules issued by the Chicago, Rock Island and Pacific Railway Company for the control of the operation of its line, and such rules are now in force. The cars and engines belonging to the Chicago, Rock Island and Gulf Railway Company, when in need of repairs, have the work done at its shops at Fort Worth and Dalhart, if the cars and engines are convenient to these two points; otherwise, the work is done at some other convenient place, either on or off the line of the Chicago, Rock Island and Pacific Railway Com-

pany, wherever the cars or engines may be at the time the repairs are needed.

"On the 2d day of August, 1904, the Chicago, Rock Island and Gulf Railway Company had a different president and altogether different executive officers from any of the lines above listed as included in the Rock Island system. The Chicago, Rock Island and Gulf Railway Company does not now and never has paid any part of the salary of any officer of the Chicago, Rock Island and Pacific Railway Company, or of any of the lines named as constituting the Rock Island system.

"Before the Chicago, Rock Island and Gulf Railway Company purchased the Chicago, Rock Island and Texas Railway Company, the Chicago, Rock Island and Mexico Railway Company and the Choctaw, Oklahoma and Texas Railroad Company, M. E. Sebree was trainmaster of the Chicago, Rock Island and Texas Railway Company and division trainmaster of the Chicago, Rock Island and Pacific Railway Company, with jurisdiction to Chickasha, Indian Territory. Since the purchase by the Gulf Company of the above-named Texas lines Mr. Sebree's jurisdiction extends over what were the Chicago, Rock Island and Mexico Railway Company and the Choctaw, Oklahoma and Texas Railroad Company, otherwise there has been no change in his employment or jurisdiction for the past five to ten years.

"The Chicago, Rock Island and Gulf Railway Company pays a portion of the salary of a joint train dispatcher located at Chickasha, Indian Territory, under the same character of arrangement which existed between the Chicago, Rock Island and Texas Railway Company and the Chicago, Rock Island and Pacific Railway Company. This train dispatcher in giving orders for the handling of trains on the Chicago, Rock Island and Gulf Railway Company is subject to the control, direction and supervision of the executive officers of the Chicago, Rock Island and Gulf Railway Company as if exclusively employed by it.

"The rails of the Chicago, Rock Island and Gulf Railway Company on the line running from Fort Worth north connects at the State line with the rails of the Chicago, Rock Island and Pacific Railway Company. The point of connection is somewhere near the middle of Red River on a bridge. At this particular point there is no town, station or turnout, and the trains going in either direction do not stop at said point. It was not possible to build a town or station at the exact point of connection."

It was further stipulated as to Thomas, the conductor, and Turpin, the ticket agent, after they were served with process, as follows:

A. L. Thomas "was at the date of said service and is now and has for many years been a conductor running on and handling passenger trains for the defendant, the Chicago, Rock Island and Pacific Railway Company, the Chicago, Rock Island and Texas Railway Company, and later on the Chicago, Rock Island and Gulf Railway Company, after its purchase of the Texas company, running and handling such trains between Fort Worth, Texas, and Caldwell, Kansas. That the run of said Thomas is now and has been from Fort Worth, Texas, to Caldwell, Kansas, as aforesaid, on both sides of the State line, and that Caldwell, Kansas, is the

end of the first passenger division on said lines north of Fort Worth. And it is further agreed that V. N. Turpin, upon whom process was served herein as the ticket agent of the defendant company was, at the date of the service of said process and has been for a long time ticket agent of the Chicago, Rock Island and Gulf Railway Company at Fort Worth, engaged in selling tickets for the said Chicago, Rock Island and Gulf Railway Company, over its lines and also over the lines of the Chicago, Rock Island and Pacific Railway Company and all of its connections. It is further agreed that the facts are that 'Thomas is carried on the Pacific Company's pay roll and paid for services rendered while on that company's line north of the Texas State line; and is carried on the Gulf Company's pay roll and paid by the Gulf Company for services rendered on its line south of the Texas State line; and that Turpin is carried on the Gulf Company's pay roll alone, and is not carried on the Pacific Company's pay roll, and is not an agent of the Pacific Company, unless the above stated facts make him one.'"

The annual report of the Pacific Company shows that the board of directors of said company consists of thirteen members, with an executive committee of eight members.

The report of the Rock Island Company shows that the board of directors of said company consists of sixteen members and its financial committee of six members.

Eleven members of the board of directors of the Pacific Company are also members of the board of directors of the Rock Island Company. Five members of the executive committee of the Pacific Company are also members of the finance committee of the Rock Island Company. The officers of the Rock Island Company, with two exceptions, are also officers of the Pacific Company, and a majority of the officers of either said companies are common to both of them.

S. B. Hovey, upon whom service was made as aforesaid, was also produced as a witness, and testified that at the time of the service of citation upon him he was the Vice President and Superintendent of the Gulf Railroad Company, and resided at Fort Worth, Texas; that he held the same position in the Chicago, Rock Island and Texas Company before it acquired the Gulf Company, and before that time he had been for many years an employe of the Pacific Company; that the train dispatcher of the Pacific Company, located on its lines at Chickasha, in the Indian Territory, is also train dispatcher of the Gulf Company. He was a "joint man," as the trains were operated by the same crews across the Texas State line without stopping; that the movements of trains on the Gulf route are directed from Chickasha as are those on the line of the Pacific Company after they cross the State line going northward. The daily

reports of the cars on the Gulf line are made to the chief dispatcher at Chickasha; that the business could not be handled in any other way.

Settlements between the two companies are made on a mileage basis. Reports are made by the officers of the Gulf Company and Mr. Winchel, who is President of the Gulf Company and of the Pacific Company. The Gulf Company keeps a fund on deposit with the Pacific Company at Chicago and receives interest thereon; that when the defendant company constructed its line of road across the Red River in 1892 the Texas Company was organized, and the Pacific Company furnished the money with which the road was constructed south from Red River to Fort Worth. Most of the directors of the Texas company were employes of the Pacific Company. No dividends were paid on the stock of the Texas company, and when the Gulf Company took over its property the directors surrendered their stock in the old company and got back their $5.00 each; that the transfer to the Gulf Company of the Texas road, the El Paso road and the Mexico road was for the purpose of consolidating these roads and getting under one management, the management of the system. The employes who run over both the Pacific and Gulf lines while in Texas are employed and discharged by the latter company; north of the Texas line they are employed and discharged by the Pacific Company; the operation of trains was then as it had been before the Rock Island and Texas road ceased to exist; that the Pacific Company did not pay any part of the salaries of the heads of the departments of the Gulf Company—none for the general office. It, the Pacific Company, pays the train men according to the number of miles run on its rails. The Gulf Company pays the expenses of the men while on the rails of that company according to the number of miles run; that the Rock Island and Gulf Company had separate cars, servants and agents of its own; that the Gulf Company lines booked trains daily between Fort Worth and its northern terminus and back, which trains do not run on the lines of the Pacific road. He also testified that the lines mentioned on the Rock Island folder as constituents of the Rock Island System, namely, the Chicago, Rock Island and Mexico; the Chicago, Rock Island and El Paso; the Choctaw, Oklahoma and Gulf; the Chicago, Rock Island and Texas; and the Chicago, Rock Island and Pacific, were not operated as one road, but were operated separately; that the revenues were divided just as revenues earned by the Chicago, Rock Island and Gulf and T. & P. would be divided; that they were divided on a mileage basis; that no reports were made by the Gulf Company to the head of the traffic department of the Pacific Company; that reports were made by the Gulf Company to the President of the Gulf Company, who was also President of the Pacific Company; that no representative of the Pacific Company was sent to examine the books of the Gulf Company further than just as a repre-

sentative of any other connecting line would occasionally check up business with the Gulf Company; that the books of the latter company had never been audited from the Chicago office; that there was no contract between the Gulf Company and the Pacific Company, except a traffic agreement as to the division of rates, made by the general freight agent of each line, of the same character of contract which exist between the Gulf Company and other line with which it interchanges business; that the Gulf Company owned about 1,500 or 1,600 freight and cattle cars and about twenty engines, which were marked C. R. I. and G.; the train dispatcher has no power to furnish cars on the Gulf road if I instruct him not to do so; that since he had been Vice President of the Gulf Company he had had no connection whatever with the Pacific Company and no duties to perform with any other railroad than the Gulf Company; that for traffic hauled over the two lines the Gulf Company received the amount agreed upon by the general freight agents in the same manner that the Gulf Company and the T. and P. divided the revenues; that neither road pays any part for moving freight over the other line, nor pays any part of the loss sustained while in the hands of the other company by damage to freight; that the Gulf Company has on deposit with the Pacific Company several hundred thousand dollars, for which it receives six per cent interest per annum. When needed it is checked out.

A copy of the folder of the "Rock Island System's" lines was sent up with the record. A copy of the map shown on the folder is printed on the freight window of the office of the agent of the Gulf Company and calendars with that map printed on them are distributed for the purpose of advertising the system lines.

Mr. Justice DAY delivered the opinion of the Court.

This case presents a question of jurisdiction to be determined as one of fact. It may be divided into two propositions: First. Was the Pacific Company doing business in the State of Texas? Secondly. If so, were the alleged agents served with process in the State of Texas duly authorized as such and competent to be thus served, in such wise as to give jurisdiction of the Pacific Company?

The statutes which concern service on corporations in the State of Texas are as follows (Sayles' Texas Civil Statutes):

"Art. 1194, Sec. 25. Foreign, private or public corporations, etc.—Foreign, private or public corporations, joint stock companies or associations, not incorporated by the laws of this State, and doing business within this State, may be sued in any court within this State having jurisdiction over the subject matter, in any county where the cause of action or a part thereof accrued, or in any county where such company may have an agency or representative, or in the county in which the principal office of

such company may be situated; or when the defendant corporation has no agent or representative in the State, then in the county where the plaintiffs or either of them reside."

"Art. 1223. Foreign corporations, how served.—In any suit against a foreign, private or public corporation, joint stock company or association, or acting corporation or association, citation or other process may be served on the president, vice president, secretary or treasurer, or general manager, or upon any local agent within this State, of such corporation, joint stock company or association, or acting corporation or association."

By the act of March 13, 1905, (General Laws of Texas, 1905, p. 30,) an additional method of serving foreign corporations was provided as follows:

"SEC. 2. That service may be had on foreign corporations having agents in this State in addition to the means now provided by law by serving citation upon any train conductor who is engaged in handling trains for two or more railway corporations, whether said railroad corporations are foreign or domestic corporations, if said conductor handles trains over foreign or domestic corporations' tracks across the State line of Texas and on the track of a domestic railway corporation within the State of Texas, or upon any agent who has an office in Texas, and who sells tickets or makes contracts for the transportation of passengers or property over any line of railway or part thereof, or steamship or steamboat of any such foreign corporation or company.

"SEC. 3. For the purpose of obtaining service of citation on foreign railway corporations, conductors who are engaged in handling trains and agents engaged in the sale of tickets or the making of contracts for the transportation of property as described in sec. 2 of this act, are hereby designated as agents of said foreign corporations or companies upon whom citation may be served."

It is settled by the decisions of this court that foreign corporations can be served with process within the State only when doing business therein, and such service must be upon an agent who represents the corporation in its business. *St. Clair* v. *Cox*, 106 U. S. 350; *Goldy* v. *Morning News*, 156 U. S. 518, 521, 522; *Conley* v. *Matthieson Alkali Works*, 190 U. S. 406.

It is contended upon the part of the plaintiffs in error that the Pacific Company was doing business in the State of Texas, because of a partnership arrangement with the Gulf Company, or because the latter company was the agent of the Pacific Company, or, as it is sometimes said, the representative of the Pacific Company in the State of Texas. As to the question of partnership, we do not think this record presents a question of that sort. The suit is not for a partnership liability. It is an action upon a single cause of action for the tort of the Pacific Company. Service is not had by serving one partner. The real contention is that the service reaches the Pacific Company because of the agency or representative character of the Gulf Company.

Is it true that the Gulf Company was the agent of the Pacific Company or its mere creature in such a sense that to serve it is equivalent to serving

the controlling company? It is a fact that both companies had common agents and employes to a certain extent, but the record shows that such employes were paid in proportion to the business done for each company. And that while in the service of the companies respectively they were under the exclusive management and control of the company in whose service they were engaged, with no power to discharge or employ the one company for the other; and that, although the service was in a sense common, it was kept distinct and separate in the control and payment of the employes while in the separate service of the respective companies.

It is true that the Pacific Company practically owns the controlling stock in the Gulf Company, and that both companies constitute elements of the Rock Island system. But the holding of the majority interest in the stock does not mean the control of the active officers and agents of the local company doing business in Texas. That fact gave the Pacific Company the power to control the road by the election of the directors of the Gulf Company, who could in turn elect officers or remove them from the places already held; but this power does not make it the company transacting the local business.

This record discloses that the officers and agents of the Gulf Company control its management. The fact that the Pacific Company owns the controlling amount of the stock of the Gulf Company and has thus the power to change the management does not give it present control of the corporate property and business. *Pullman Palace Car Company* v. *Missouri Pacific Co.*, 115 U. S. 587, 597.

In *Conley* v. *Mathieson Alkali Works*, 190 U. S. 406, suit was brought upon a contract with the Mathieson Alkali Works. The defendant had designated no agent upon whom summons could be served, and service was made upon two members of the board of directors resident of the city of New York. Upon motion made to set aside the service of summons a reference was directed to ascertain whether the defendant corporation was doing business in the State of New York. The master reported, among other things, that the defendant had operated a plant at Niagara Falls, but had conveyed all its property to another corporation organized under the laws of Virginia. That the consideration expressed for the conveyance was $1 and other valuable consideration, but the substantial consideration was the entire capital stock of the grantee, the Castner Electrolytic Alkali Company. That the business of the defendant since said transfer was carried on in Providence, where it had its principal place of business. The master found that the company at the time of attempted service was not doing business in New York. Of the effect of the transfer of the entire stock of the new company to the defendant the master found: "The fact that it held the entire capital stock of the Castner Electrolytic Alkali

Company, and that the operations of that company were carried on under the same management as before December 31, 1900, is not material. The new corporation was a separate legal entity, and, whatever may have been the motives leading to its creation, it can only be regarded as such for the purpose of legal proceedings. It was that corporation alone which transacted any business in this State, notwithstanding it may have been for all practical purposes merely the instrument of the defendant corporation. *People* v. *American Bell Telephone Co.*, 117 N. Y. 241; *United States* v. *American Bell Telephone Co.*, 29 Fed. Rep. 71."

Upon exceptions the master's report and conclusions were affirmed and the service set aside. That judgment was affirmed in this court. In the course of the opinion, Mr. Justice McKenna, speaking for the court, coming to deal with the effect of the transfer to the Castner Company, said: "The defendant was competent to convey its property to the Castner Electrolytic Alkali Company and afterwards make the locality of its own business Providence and Saltville. Whether the transfer to the latter company was fraudulent we certainly cannot decide from this record, and the by-law which provided for a monthly meeting in New York could not of itself keep the corporation in New York. The testimony is positive that no business of the corporation was done in New York city after the transfer of the Niagara Falls plant; that all of the business of the corporation was conducted at Providence, except of a purely manufacturing character, which was conducted at Saltville."

So, in the case at bar, notwithstanding the ownership of the stock in the Gulf Company by the Pacific Company, the former company transacts the business in Texas, and is a separate legal entity, authorized under the laws of Texas and legitimately carrying on business there.

There is no evidence that the Pacific Company may not lawfully hold the stock of the Gulf Company, and under the statute of Illinois it seems to be authorized so to do. Starr & Curtis, Ill. Stat. vol. 3, p. 3229. It is true that the Pacific Company loaned the money to build the road of the Texas company, predecessor of the Gulf Company. But as was well observed by Judge (afterwards Justice) Jackson in *United States* v. *American Bell Telephone Company*, 29 Fed. Rep. 17: "For one person to supply means for another to do business on is not the doing of that business by the former."

The conduct and control of the business in Texas was entrusted to the Gulf Company. As the largest stockholder the Pacific Company had an interest in that business, but a separate corporation had been legally created in Texas, with authority to make contracts and control its own affairs and carry on its own business. This separate corporation had its

own officers, a large amount of its own property, was responsible for its contracts and to persons with whom it dealt.

Nor do we think that the persons served with process are agents of the Pacific Company doing the business of the company in Texas. Section 2 of the act of March 13, 1905, (Laws of Texas, 1905, p. 30,) is very broad, and would seem to comprehend conductors who handle trains for two or more corporations over foreign or domestic roads across the State lines of Texas and on the track of a domestic railroad within the State of Texas, or upon any agent who has an office in Texas and who sells tickets or makes contracts for the transportation of passengers or property over any line of railroad or part thereof of any such foreign corporation or company; and such companies and agents by section 3 of the act are made agents of the foreign corporation or company, upon whom the citation may be served. But it is essential to the validity of such service that the corporation shall be doing business within the State, and that the service be upon an agent representing the corporation with respect to such business. *Goldie* v. *Morning News*, 156 U. S. *ubi sup.; Conley* v. *Mathieson Alkali Co.*, 190 U. S. *ubi sup.*

The conductors, one of whom was served, when he crossed the Texas line, this record shows, became the servant and agent of the Gulf Company. The ticket agent sold tickets for the Gulf Company, in whose employment he was. He would also sell tickets good upon its line, and over the lines of the Pacific Company, but he transacted this business as the agent of the Gulf Company. As to Hovey, the record fails to show that he was agent of the Pacific Company; on the contrary, it shows that he had no connection with the company, and that his duties were confined to the affairs of the Gulf Company. The same is true of Merrell, and as to Sebree, the record shows that for the services rendered as trainmaster he was paid by each company for the service performed for it and had no charge as agent of the business of the Pacific Company in the State of Texas.

We reach the conclusion that the Pacific Company was not doing business in the State of Texas and that the attempted service was not upon agents of that company transacting its business in that State in such a sense as to give jurisdiction by service of citation upon them. The judgment of the Circuit Court is

Affirmed.

Dissenting: The CHIEF JUSTICE and Mr. Justice MOODY.

True copy.

Test:

Clerk Supreme Court, U. S.